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THE FINANCE ACTS,

1894—1919,

SO FAR AS THEY RELATE TO

THE ESTATE DUTY

AND OTHER DEATH DUTIES
(EXCEPT INCREMENT VALUE DUTY),

WITH

NOTES AND TABLE OF FORMS.

FOURTH EDITION

BY

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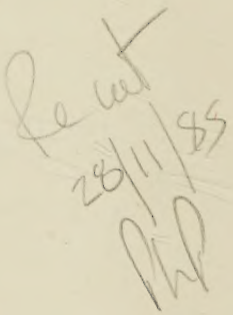

PREFACE

TO THE FOURTH EDITION.

THE Finance Acts, 1914, No. 2 of 1915, 1916, 1917, 1918, and 1919, have been passed, and more than fifty cases, in connection with Death Duties, have been decided in the Courts since the Third Edition of this book was published, consequently a new edition has become necessary.

The Commissioners of Inland Revenue and the Estate Duty Office are neither responsible for nor bound by any statement in this book.

J. W.-B.

ESTATE DUTY OFFICE,
SOMERSET HOUSE,
11*th January*, 1921.

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ADDENDA.

The following case has been reported since going to press:—

Att.-Gen. v. *Anderton and others*, [1921] 1 K. B. 159.

The facts are as follows:

A testator (died 1860) devised real estate to his son William for life (died 1904), remainder to his first son (Charles) in tail male.

On the 6th and 7th June, 1882, Charles and William disentailed and re-settled to such uses as they should jointly appoint and in default (subject to a term of years and an annuity to Charles during joint lives of himself and his father) to William for life; remainder to Charles for life; remainders over, but with a provision that if Charles survived William and had a son who should attain the age of ten years (which happened) Charles might appoint to himself absolutely.

Held that the Succession Duty on William's death was payable on the principal value under sect. 18 of the Finance Act, 1894, and not on Charles's life interest only under sect. 21 of the Succession Duty Act, 1853, the words "succession to real property arising on the death of a deceased person" in sect. 18 meaning "the interest entered upon in possession by succeeding to a succession in real property on the death of a deceased."

FINANCE ACTS, 1894–1919.*

INTRODUCTION.

PRIOR to the Finance Act, 1894, the death duties in force were Probate Duty, Account Stamp Duty, Succession Duty, Legacy Duty, and Temporary Estate Duty (the last being imposed by sects. 5 and 6 of the Customs and Inland Revenue Act, 1889).

The Finance Act, 1894, introduced a new death duty, called Estate Duty, combining some of the characteristics of Probate Duty, Account Stamp Duty, and Succession Duty, being payable on the deceased's free estate (real and personal), on property that would prior to that Act have paid Account Stamp Duty, and on settled property passing on the death of a person after the 1st of August, 1894.

It abolished Probate Duty and Account Stamp Duty, in respect of the property of persons dying after that date, and it made Succession Duty payable on the principal value of real estate where the successor is competent to dispose. It also exempted property chargeable with Estate Duty from 1 per cent. Legacy Duty, 1 per cent. Succession Duty (including the additional ½ and 1½ per cent. Succession Duties under the Customs and Inland Revenue Act, 1888, s. 21), and from the Temporary Estate Duty.

The 1 per cent. Legacy and Succession Duties were re-imposed by sect. 58 (2) of the Finance (1909–10) Act, 1910, but only when the total value of the property (excluding certain property mentioned in such section) passing on the death of the deceased is over the value of £15,000, and subject also to the proviso that each beneficiary must take property over the value of £1,000, and in the case of the widow or infant child of the predecessor over the value of £2,000. The

* Throughout this book the references to sections of an Act, without mentioning the title of the Act, are to the Finance Act, 1894.

spouse of the predecessor was also made liable to these duties for the first time.

The Finance Act, 1894, also introduced a further duty called Settlement Estate Duty, where the property, in respect of which Estate Duty is paid, is settled by the will of the deceased or by some other disposition taking effect after the 1st August, 1894, and the property passes under that disposition, on the death of the deceased, to some person not competent to dispose thereof, except where the only life interest is that of the deceased's spouse. Settlement Estate Duty is not payable in the case of any person dying after the 15th August, 1919 (sect. 14 of the Finance Act, 1914). This duty is dealt with in detail in Chapter II.

Where the death of the deceased occurred before the 2nd August, 1894, the Finance Act, 1894, s. 21 (2), directed the death duties formerly payable should "continue to be payable in like manner in all respects as if this Act had not been passed."

Property liable to Estate Duty.

The duty is payable in respect of

I. All property passing on the death, except as thereinafter mentioned (sect. 1).

II. Certain property deemed to pass on the death (sect. 2 (1)), such as

(a) Property of which the deceased was competent to dispose. This is defined by sect. 22 (2) (a) of the Finance Act, 1894.

(b) Property in which the deceased or some other person had an interest ceasing on the death to the extent to which a benefit accrues or arises by such cesser.

(c) Property which would have been liable to Account Stamp Duty under sect. 38 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), as amended by sect. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), and as if those Acts extended to real estate and omitted all reference to voluntary, voluntarily, and a volunteer. The period of twelve months mentioned in these Acts was extended to three years by sect. 59 (1) of the 1910 Act in the case of persons dying on or after the 30th April, 1909, except as mentioned in such section.

(d) Any annuity or other interest purchased or provided by the deceased alone or in concert or by arrangement with another person, to the extent of the beneficial interest accruing by survivorship or otherwise on the deceased's death.

The domicile of the deceased and the situation of the property have a very important bearing on the liability of property to Estate Duty, and these points are fully dealt with in Chapter III.; but it may be shortly stated that:

(1) If the deceased's domicile is British, his real estate in the United Kingdom (but not that abroad) and his personal estate, wherever situate, are liable to Estate Duty. (See sect. 2 (2), Finance Act, 1894.)

(2) If the deceased's domicile is foreign, his real and personal estate in the United Kingdom only are liable to Estate Duty.

(3) Property situate out of the United Kingdom only pays Estate Duty if, before the Finance Act, Legacy or Succession Duty would have been payable thereon, or would have been payable but for the relationship of the parties. Sect. 2 (2).

Property Exempted from Estate Duty.

A full list of the properties expressly exempted from Estate Duty is set out on pp. 3 to 6, which should be consulted on this point.

Those exemptions are fairly exhaustive, but speaking generally, if property passes on the death of a person dying after the 1st August, 1894, or any interest in property ceases by the death of such a one, and it cannot be found to fall under any of those exemptions, it should be assumed to be within the charge of Estate Duty, and the facts should be fully stated in a letter to the Controller of the Estate Duty Office, Somerset House, for the opinion of that department.

Value of Property for Estate Duty.

The method of fixing the value is provided for by sect. 7.

If the property passes on the death, the duty is leviable on the principal value, and this by sect. 7 (5) "shall be estimated to be, the price which in the opinion of the Commissioners such property would fetch, if sold in the open market, at the time of the death of the deceased." The value

of any benefit accruing or arising from the cesser of an interest ceasing on the death shall

(a) If the interest extended to the whole income of the property be the principal value of that property, and

(b) If the interest extended to less than the whole income of the property be the principal value of an addition to the property equal to the income to which the interest extended. See sect. 7 (7)

Allowance is to be made for reasonable funeral expenses and for debts and encumbrances, but with a special provision (sect. 7 (1)) that debts of the deceased are not to be allowed unless incurred *bonâ fide* for full consideration in money or money's worth.

Reversions are to be dealt with as specified in sect. 7 (6). Agricultural property (defined in sect. 22 (1) (g)), where there is no expectation of an increased income (as, for instance, from a prospective building value), is not to be valued at more than twenty-five times the annual value, as assessed under Schedule A. of the Income Tax Acts, after making the deductions mentioned in sect. 7 (5). This method of valuing agricultural property was abolished by sect. 60 (1) of the 1910 Act in the case of persons dying on or after the 30th April, 1909, except in the cases mentioned in sect. 61 (1) of that Act.

Inalienable lands settled by Act of Parliament or royal grant, by sect. 5 (5) are to be valued for Estate Duty in like manner as for the purposes of Succession Duty: viz., on the life interest of the actual successor.

The Commissioners may authorise a person to inspect and report to them the value of any property (see sect. 7 (8)), but when the Commissioners require a valuation to be made by a person *named by them*, the costs of such valuation are to be borne by the Commissioners. See sect. 7 (9). The value of real and leasehold property is now in every case fixed by the Valuation Department, set up in connection with the land taxes under the 1910 Act.

Any person aggrieved by the decision of the Commissioners, on the ground of the value of any property, may appeal, but such appeal must now be to a referee under sect. 33 of the 1910 Act. See sect. 60 (3) of that Act. There is a right of appeal against the decision of a referee to the High Court, provided that where the total value as alleged by the Commissioners does not exceed £500, the appeal may be to the

County Court. See sect. 33 (4) of the 1910 Act. Any person aggrieved by the decision of the Commissioners on matters, other than value, may still appeal to the High Court. See sect. 10.

Aggregation.

The Finance Act, 1894, introduced a new feature into the death duty taxation called aggregation, viz., the adding together the value of all properties passing on the death, although comprised in numerous different instruments, in order to ascertain the rate at which the Estate Duty is to be assessed on each of the different items of property. See sect. 4 of the Finance Act, 1894. Certain property is exempt from this general aggregation, and forms an estate by itself, viz.:—

(a) Property in respect of which Estate Duty is payable (exclusive of property settled otherwise than by the will of the deceased) which does not exceed £1,000 in value. See sect. 16 (3).

(b) Property passing under an instrument not made by the deceased to some person other than lineal issue or lineal ancestor or spouse of the deceased. See sect. 4. This only applies if the deceased died before the 9th April, 1900. See sect. 12 (1) of the Finance Act, 1900.

(c) Property in which the deceased never had an interest. See sect. 4 of the principal Act.

(d) Property which would have been subject to limited aggregation under sect. 12 (2) of the Finance Act, 1900, where the deceased died on or after the 19th April, 1907. See sect. 16 of the Finance Act, 1907.

The limited aggregation referred to above was introduced by sect. 12 (2) of the Finance Act, 1900, and only applies under certain circumstances, fully set out on pp. 89 and 93, where the deceased died on or after the 9th April, 1900, and before the 19th April, 1907. It was repealed by sect. 16 of the Finance Act, 1907, in respect of deaths on or after the 19th April, 1907.

Rates of Estate Duty.

Where the deceased died after the 1st August, 1894, and before the 19th April, 1907, the rates are fixed by sect. 17 of the Finance Act, 1894; where the deceased died on or after

the 19th April, 1907, and before the 30th April, 1909, by sect. 12 of the Finance Act, 1907; where the deceased died on or after the 30th April, 1909, and before the 16th August, 1914, by sect. 54 of the Finance (1909-10) Act, 1910; where the deceased died on or after the 16th August, 1914, and before the 31st July, 1919, by sect. 12 of the Finance Act, 1914; and where the deceased died on or after the 31st July, 1919, by sect. 29 of the Finance Act, 1919.

Settlement Estate Duty is at the rate of 1 per cent. See sect. 17. Where the deceased died on or after the 30th April, 1909, the rate is 2 per cent. See sect. 54 of the 1910 Act.

Where the gross value of the property (exclusive of property settled otherwise than by the will of the deceased) does not exceed £300 the fixed duty of 30*s.* may be paid, and if such gross value does not exceed £500 the fixed duty of 50*s.* may be paid. See sect. 16.

Accountable Persons.

The executor (including an administrator and an executor *de son tort*, see sect. 22 (1) (d)), is accountable for the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose; this includes all the deceased's free personalty, and all personal estate over which the deceased had an absolute power of appointment, whether exercised or not. See sect. 6 (2).

The executor is empowered to pay the Estate Duty on property of which the deceased was not competent to dispose, if requested to by the accountable persons.

With reference to the duty on property for which the executor is not accountable, the beneficiaries, trustees, guardians, committees, or other persons in whom any interest in the property is vested, and every person in whom the same is vested in possession, by alienation, or other derivative title, are accountable. See sect. 8 (4). Purchasers for value without notice, agents, and bailiffs are exempted from liability. See sect. 8 (4) and 8 (18).

The duty is made a charge on property which does not pass to the executor as such (see sect. 9 (1)), but sect. 8 (2) incorporates the provisions of sects. 12 to 14 of the Customs and Inland Revenue Act, 1889, and fixes a time, when such charge ceases as against a purchaser for value, even with notice. Sect. 9 (1) provides the charge shall not affect a *bonâ fide* purchaser for value without notice.

Settlement Estate Duty, being a further Estate Duty, is payable by the same persons as the Estate Duty, and it is provided by sect. 19 (2) of the Finance Act, 1896, that the executor shall account for the Settlement Estate Duty on any legacy or other personal estate settled by the will of the deceased.

Out of what property the Estate Duty is payable.

The Estate Duty on property, which passes to the executor as such, is payable out of the residue thereof, apart from any direction in the will. See sect. 9 (1) and *Re Webber, Gribble* v. *Webber; In re Culverhouse, Cook* v. *Culverhouse; In re Fish, Lea* v. *Fish.*

The Estate Duty on property, which does not pass to the executor as such, by virtue of sects. 9 (1), 9 (6), and 14 (1) is ultimately to be borne by the beneficiaries in proportion to their respective interests. See notes at those sections.

Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased (unless the will contains an express provision to the contrary) is payable out of the settled legacy or property. See sect. 19 (1) of the Finance Act, 1896.

Settlement Estate Duty on any other property is ultimately to be borne by the beneficiaries in proportion to their several interests. See *In re Maryon-Wilson, Wilson* v. *Maryon-Wilson,* p. 497.

When Estate Duty is Due.

The duty is to be collected on an account or affidavit, and to be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens, subject to the following provisions:

(1) *Personal Estate.* Interest is payable at 3 per cent. (4 per cent. on or after 31st July, 1919) per annum on the Estate Duty from the date of the deceased's death. See sect. 6 (6).

(2) *Real Estate.* Interest is payable at 3 per cent. (4 per cent. on or after 31st July, 1919) per annum on the Estate Duty from the date at which the first instalment (see sect. 6 (8) as to the number of instalments) is due, viz., at the expiration of twelve months from the death; but if the real estate is sold, the whole

duty becomes at once payable, and carries interest from the date of sale. See sect. 6 (8).

(3) Annuities provided by the deceased referred to in sect. 2 (1) (d) of the principal Act. The Estate Duty may be paid by four equal yearly instalments; the first to be due at the end of twelve months from the death, and the unpaid portion of the duty carries interest from the date when the first instalment is due. See sect. 16 of the Finance Act, 1896.

(4) Where the fixed duty of 30*s.* or 50*s.* under sect. 16 is paid within twelve months of the death interest is not payable. See sect. 16 (5).

(5) Objects of national, &c. interest within sect. 20 (1) of the Finance Act, 1896. The duty is due one month after the date of sale, or within six months after their coming into the possession of a person competent to dispose of them. In the case of any person dying on or after the 30th day of April, 1909, the duty only becomes chargeable when the property is sold. Sect. 63 of the 1910 Act.

(6) Interests in expectancy. The duty may be paid, with the Estate Duty on the rest of the estate on the deceased's death, or postponed until the interest falls into possession. See sect. 7 (6).

Forms on which the Duty is payable.

The Estate Duty on the deceased's free personal estate and on personal property over which the deceased had an absolute power of appointment, should be accounted for on the Inland Revenue affidavit leading to the grant of representation—Form B—2, B—3, B—4, A—3, A—4, A—6, or A—7, as the case may be. See Table of Forms, p. 614.

The Estate Duty on real and settled property should be accounted for on Forms C—1 in duplicate, but it may be paid also on the Inland Revenue affidavit mentioned above.

Settlement Estate Duty should be accounted for on Form C—2 in duplicate.

Deduction of other Duties.

Where the Commissioners are satisfied that duty is payable in any such British possession as is referred to in sect. 20, in respect of any property situate in such possession and passing

on a death, they are to allow a sum, equal to the amount of that duty, to be deducted from the Estate Duty payable in respect of that property. Sect. 20.

A deduction may also be made against Estate Duty payable on a death on or after the 1st July, 1896, in respect of settled property for the 1 per cent. Legacy and Succession Duties, the additional Succession Duties under sect. 21 of the Customs and Inland Revenue Act, 1888, and the Temporary Estate Duty under sects. 5 and 6 of the Customs and Inland Revenue Act, 1889, paid or payable on the capital of the same property, under the same settlement, prior to the 2nd August, 1894. See sect. 21 of the Finance Act, 1896.

Settlement Estate Duty may be deducted against the Estate Duty which is payable by reason of sect. 14 of the Finance Act, 1914.

Certificates of Charge.

The Commissioners are empowered to grant a certificate of the Estate Duty paid in respect of any property. See sect. 9 (2).

This certificate is conclusive evidence that the amount of duty named therein is a first charge on such property after the debts and incumbrances allowed in assessing the duty. Sect. 9 (3).

Certificates of Discharge.

The Commissioners on being satisfied that the full Estate Duty has been or will be paid may give a certificate that will discharge the property shown therein from any further Estate Duty. Sect. 11 (1).

If this certificate is obtained by fraud it will only discharge the property in the hands of a *bonâ fide* purchaser for value without notice. Sect. 11 (4).

The Commissioners are also empowered by sect. 11 (2) to grant certificates, after the lapse of two years from the death, discharging both the applicant and the property under the circumstances there mentioned. By sect. 14 of the Finance Act, 1907, the Commissioners may grant such certificates notwithstanding two years have not expired.

Succession Duty.

The method of calculating Succession Duty on real estate was considerably altered by sect. 18 of the Principal Act,

which provided, that where the successor is competent to dispose of property, the value of such property for the purposes of Succession Duty shall be the principal value, instead of, as formerly, the value of the life interest only of the successor.

The Amending Acts.

The principal amendments made by these Acts are as follows:—

The Finance Act, 1896.

Exempted property, in which the life interest of the settlor was enlarged to an absolute interest, from Estate Duty. Sect. 14.

Exempted property reverting to the settlor from Estate Duty. Sect. 15.

Enabled Estate Duty on annuities to be paid by four yearly instalments. Sect. 16.

Excluded fractions of £100 from Estate Duty. Sect. 17. Repealed by sect. 18 of the 1900 Act.

Enabled the payment of Estate Duty to be postponed on objects which the Treasury should certify to be of "national, scientific, or historic interest," until sale or in the possession of some person competent to dispose. Sect. 20.

Enabled an allowance to be made for Legacy and other Duties paid on the capital of settled property. Sect. 21.

The Finance Act, 1898.

Declared that the deceased must have been "*sui juris*" to permit Estate Duty to be levied on his death, if Estate Duty already paid in respect of the settled property. Sect. 13.

Enabled Settlement Estate Duty to be returned if the settlement failed to take effect. Sect. 14.

Finance Act, 1900.

Made Estate Duty payable, although the deceased had surrendered his life interest, unless such surrender was more than twelve months prior to his death and to his entire exclusion. Sect. 11.

Introduced limited aggregation in certain cases and made other amendments as to aggregation. Sect. 12.

Enabled the Treasury to remit the death duties up to a certain amount in the case of persons killed in war. Sect. 14.

The Revenue Act, 1903.

Enabled the fixed duty of 30*s.* or 50*s.*, when paid through a mistake, to be deducted from further Estate Duty. Sect. 14.

The Finance Act, 1907.

Increased the rates of Estate Duty. Sect. 12.

Extended the powers of the Commissioners to remit death duties. Sect. 13.

Enabled certificates of discharge to be given without waiting two years. Sect. 14.

Simplified the calculation of the allowance to be given under sect. 21 of the Finance Act, 1896. Sect. 15.

Abolished limited aggregation and provided that property that would have been liable to limited aggregation should form an "estate by itself." Sect. 16.

The Finance (1909–10) *Act*, 1910.

Directed appeals on the question of the value of freehold or leasehold property should be to a referee. Sect. 33.

Increased the rates of Estate Duty and Settlement Estate Duty. Sect. 54.

Limited the relief conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894. Sect. 55.

Enabled the Commissioners to accept a transfer of land in satisfaction of duties. Sect. 56.

Limited the deduction of debts in certain cases. Sect. 57.

Increased the rates of Legacy and Succession Duty, and re-imposed the 1 per cent. Legacy and Succession Duties in certain cases. Sect. 58.

Extended the period of twelve months to three years, outside which it is necessary that gifts and surrenders of life interests should take place to escape Estate Duty, and exempted certain gifts from duty. Sect. 59.

Amended the method of ascertaining the value of agricultural and other items of property, including timber. Sects. 60 and 61.

Extended the exemption of objects of "national, scientific, or historic interest" (under sect. 20 of the Finance Act, 1896)

to those of "artistic interest," and made duty payable only if and when such articles should be sold. Sect. 63.

The Finance Act, 1911.

Amended the method of ascertaining the value of cottages on agricultural estates. Sect. 18.

The Finance Act, 1912.

Amended the method of ascertaining the value of timber trees and wood. Sect. 9.

The Finance Act, 1914.

Increased the rates of Estate Duty. Sect. 12.

Reduced the full amount of Estate Duty where the margin above the limit of each step in the scale of rates is small. Sect. 13.

Abolished the exemption from a further Estate Duty conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894, except where the two deceased persons had been parties to a marriage; abolished Settlement Estate Duty and provided for allowing Settlement Estate Duty in certain cases against Estate Duty. Sect. 14.

Relief in respect of quick successions to property. Sect. 15.

The Death Duties (Killed in War) Act, 1914.

Extended the remission of death duties in the case of persons killed in war. Sect. 1.

Further extension of remission in case of property passing twice by reason of deaths caused by the war. Sect. 2.

The Finance (No. 2) Act, 1915.

Extended sect. 2 of the Death Duties (Killed in War) Act, 1914, to legacy and succession duty. Sect. 46.

Treasury to have power to issue securities free of taxation. Sect. 47.

Abolished necessity for re-sealing grants in the case of Government Stock. Sect. 48.

The Finance Act, 1916.

Exemption from taxation given to certain municipal securities issued in America. Sect. 63.

The Finance Act, 1917.

Remission of death duties in cases of members of crews of vessels killed in war. Sect. 29.

Power given to transfer war stock and bonds in satisfaction of death duties. Sect. 34.

The Finance Act, 1918.

Provision for dealing with small amounts of Government Stock belonging to deceased persons. Sect. 38.

The Finance Act, 1919.

Increase of rates of Estate Duty. Sect. 29.

Interest on death duties increased to 4 per cent. Sect. 30.

Extension of relief from death duties in case of persons killed in war. Sect. 31.

These Acts are fully explained after the principal Act, or under the appropriate amended sections thereof.

FINANCE ACTS, 1894-1919.

CHAPTER I.

FINANCE ACT, 1894.

[57 & 58 Vict. c. 30.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year.

[31st July, 1894.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Part I.—Estate Duty.

Grant of Estate Duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon

the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate Duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate Duty.

"**Estate Duty.**"—Speaking generally, Estate Duty is payable on the death of every person dying after the 1st August, 1894, on the *principal value* of all the property *passing* on his death unless it can be shown to fall within any of the exemptions mentioned in the Act or amending Acts. These exemptions are summarised on pp. 3 to 6, and are dealt with under the sections there mentioned.

"**Every person.**"—The Act makes no exception on account of the domicile of the deceased being out of the United Kingdom. Therefore the Act applies to all real and personal estate situate in the United Kingdom of a deceased owner notwithstanding his domicile may be foreign, and so general are its terms that, apart from sub-sect. (2) of sect. 2,* it would have even extended to the foreign immoveables or moveables of a deceased person domiciled abroad. It is, of course, reasonable to suppose that no nation would attempt to extend their taxes to such a case because, except in a few isolated cases, the tax would be uncollectable.

"**Save as hereinafter expressly provided.**"—The Master of the Rolls, in *Att.-Gen.* v. *Londesborough* in the Court of Appeal, said: "If and so far as it *is* expressly provided to the contrary, the substantive enactment of the first section does not apply." It follows, therefore, that Estate Duty is neither *chargeable* nor *payable* on property expressly exempted. Property under 100*l.* in value may be within the *charge* of Estate Duty imposed by sect. 1 although (since no rate is fixed by sect. 17) no Estate Duty is in fact *payable*. Likewise property may also be within the *charge* of Estate Duty although no duty is actually *payable*, because there is an allowance under sect. 20 (1) of the Finance Act, 1894, or sect. 21 of the Finance Act, 1896, equal to or greater than the Estate Duty.

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* *Note.*—Where no Act is mentioned the references are to the sections of the Finance Act, 1894.

Property Exempted from Estate Duty.

(*a*) EXEMPTIONS UNDER THE FINANCE ACT, 1894.

1. Property in which a person was interested as holder of an office or recipient of the benefits of a charity or as a corporation sole. (Sect. 2 (1) (b).)

2. Property situate outside the United Kingdom, in respect of which no legacy or succession duty would have been payable, under the law in force prior to the 2nd August, 1894, whatever the relationship of the parties. (Sect. 2 (2).)

3. Property held by the deceased as a trustee for another person provided the conditions of sect. 2 (3), as amended by sect. 59 (1) of the 1910 Act, are complied with.

4. (a) Property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes.

(b) The falling into possession of the reversion on any lease for lives.

(c) The determination of any annuity for lives.

Where such purchase, lease, or annuity was made or granted for full consideration in money or money's worth. (Sect. 3.)

5. Settled property (other than lands or chattels settled by Act of Parliament or Royal Charter so as to be inalienable) which has paid Estate Duty since the date of the settlement until the death of a person (being *sui juris*) who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose thereof. (Sect. 5 (2) Finance Act, 1894, and sect. 13 of Finance Act, 1898.)

If the deceased died on or after the 30th April, 1909, the payment of Estate Duty on an interest in expectancy does not relieve from a further Estate Duty, unless the previous payment was on the death of the settlor. (Sect. 55 of the 1910 Act.)

If the deceased died after the 15th August, 1914, this relief is abolished except where the two deceased persons were parties to a marriage. (Sect. 14 of the Finance Act, 1914.)

6. Settled property in which the deceased's interest failed or determined before it became an interest in possession and subsequent limitations under the settlement continued to subsist. (Sect. 5 (3).)

7. The property of common seamen, marines, or soldiers, who are slain or die in the service of His Majesty. (Sect. 8 (1).)

8. Sums of less than 100*l.* which, under the Friendly Societies Act, Savings Bank Act, &c., may be paid to the representatives of the deceased without requiring representation. (Sect. 8 (1).)

9. Property on which the Estate Duty has been commuted under sect. 12.

10. An annuity not exceeding 25*l.* provided by the deceased alone or in concert with another, and passing or arising on the deceased's death. (Sect. 15 (1).)

11. Pictures, prints, books, manuscripts, works of art, or scientific collections, given or bequeathed for national purposes, or to any university or county council, or municipal corporation, in respect of which the Treasury may remit the Estate Duty. (Sect. 15 (2).)

12. Any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government. (Sect. 15 (3).)

13. Advowsons or church patronage, which would have been free from Succession Duty under sect. 24 of the Succession Duty Act, 1853. (Sect. 15 (4).)

14. (a) Property passing on a death where the total aggregable estate is under 100*l.* in value, and (b) if the property is not aggregable with any other property then the whole of such non-aggregable property if under 100*l.* in value. (Sect. 17.)

15. Property settled by the will or disposition of a person dying on or before the 1st August, 1894, in respect of which Probate or Account Duty has been paid, or is payable, unless the deceased was at the time of his death or, at any time since the will or disposition took effect, had been competent to dispose thereof. (Sect. 21 (1).)

If the deceased died on or after the 30th April, 1909, the payment of Probate Duty on an interest in expectancy does not relieve from the charge of Estate Duty unless such payment was on the death of the settlor. (Sect. 55 of the 1910 Act.)

If the deceased died after the 15th August, 1914, this relief is abolished except where the two deceased persons were parties to a marriage. (Sect. 14 of the Finance Act, 1914.)

16. Property passing on the death which the successor sold for full consideration in money or money's worth prior to the 2nd August, 1894. (Sect. 21 (3).)

17. Property settled before the 2nd August, 1894, by one spouse on the other, so that the survivor becomes entitled to the *income* of his or her own property. (Sect. 21 (5).)

(*b*) EXEMPTIONS UNDER THE FINANCE ACT, 1896.

18. Property passing on a death so as to enlarge the life interest of the settlor to an absolute one. (Sect. 14.)

19. Property reverting to the settlor, provided no other interest is created therein. (Sect. 15 (1).)

20. Property of which the deceased was seised in right of his wife, and which reverts to her in virtue of her former interest. (Sect. 15 (4).)

21. Pictures, prints, &c., which appear to the Treasury to be of national, scientific, or historic interest, settled so as to be enjoyed in kind in succession by different persons while enjoyed in kind by a person not competent to dispose of them. (Sect. 20 (1).)

(*c*) EXEMPTIONS UNDER THE FINANCE ACT, 1900.

22. Property passing on the death of any person subject to the Naval Discipline Act or military law, who dies from wounds inflicted, or disease contracted, on active service if the Treasury remit the death duties in accordance with the conditions expressed in sect. 14 (1).

This exemption was extended by sects. 1 and 2 of the Death Duties (Killed in War) Act, 1914, sect. 46 of the Finance (No. 2) Act, 1915, sect. 29 of the Finance Act, 1917, and sect. 44 of the Finance Act, 1918.

(*d*) EXEMPTIONS UNDER THE FINANCE (1909–10) ACT, 1910.

23. Property the subject of any gift *inter vivos*, surrender, assurance, divesting or disposition without reservation, made more than a year before deceased's death for public or charitable purposes. (Sect. 59 (1).)

24. Property the subject of any similar gift, surrender, &c., more than a year before deceased's death, no matter in whose favour, if made or effected before the 30th April, 1908. (Sect. 59 (1).)

25. Gifts *inter vivos* whenever made if in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the deceased's normal expenditure and to have been reasonable. (Sect. 59 (2).)

26. Gifts *inter vivos* which do not exceed 100*l.* in value to any one donee. (Sect. 59 (2).)

27. Property disposed of by the deceased, although not

originally to his entire exclusion, if he is excluded from all benefit more than three years prior to his death. (Sect. 59 (3).)

28. Timber, trees and wood until sold. (Sect. 61 (5), as amended by sect. 9 of the Finance Act, 1912.)

29. Pictures, prints, &c., which appear to the Treasury to be of national, scientific, historic or artistic interest, whether settled or not, until actually sold. (Sect. 63.)

(*e*) EXEMPTIONS UNDER THE AMERICAN LOAN ACT, 1915 (5 & 6 GEO. 5, c. 81).

30. Any securities issued for the purposes of any such loan in the United States of America, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom. (Sect. 1 (3).)

(*f*) EXEMPTION UNDER THE FINANCE (No. 2) ACT, 1915.

31. Securities issued by the Treasury under the power in sect. 47 so long as it is shown in the manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom. (Sect. 47.)

(*g*) EXEMPTIONS UNDER THE FINANCE ACT, 1916.

32. Securities issued in the United States of America by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom. (Sect. 63.)

(*h*) PROPERTY EXEMPT FROM ESTATE DUTY, BUT NOT BY REASON OF ANY EXPRESS STATUTORY EXEMPTION.

33. Property in which the deceased surrendered all his interest, if an absolute interest to anyone, and if a life interest, to the person entitled in remainder on his death, more than a year before his death if his death occurred before the 30th April, 1909, or more than three years before his death if his death occurred on or after that date, and to the entire exclusion of any benefit to the deceased. (See *Att.-Gen.* v. *Beech* and

Att.-Gen. v. *De Preville*, sect. 11 (1), Finance Act, 1900, and sect. 59 of the 1910 Act.)

"**Principal value ascertained as hereinafter provided.**"—Sect. 7 (5) provides that such principal value shall be estimated to be the saleable value in the open market at the time of the deceased's death.

Sect. 7 (7) provides the method for ascertaining the value of a benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased.

"**Property, real or personal.**"—Property is defined in sect. 22 (1) (f) as including real property and personal property, and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale. The questions of how far (1) the situation of the property abroad, and (2) the domicile of the owner affect the incidence of the duty are dealt with in Chapter III.

"**Settled or not settled.**"—"Settled property" is defined in sect. 22 (1) (h) to mean, property comprised in a settlement, and by sect. 22 (1) (i) "settlement" means, any instrument, whether relating to real property or personal property, which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882, or if it related to real property, would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust.

The first sub-section of sect. 2 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), runs as follows:—

> Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made before or after, or partly before and partly after the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for the purposes of this Act a settlement, and is in this Act referred to as a settlement or as settlements as the case requires.

The first four sub-sections of sect. 2 of the Settled Land Act, 1882, are set out on pp. 303 and 304.

Mr. Justice Kennedy interpreted "by way of succession" in the case of *Att.-Gen.* v. *Owen* as equivalent to "successively upon death."

"**Which passes on the death.**"—"Property passing on the death" includes under sect. 22 (1) property passing immediately

or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death."

Lord Russell, L. C. J., in *Att.-Gen.* v. *Wendt*, 73 L. T. R. 255, said (p. 256), as to an annuity provided under the terms of a partnership deed, for the widow of a deceased partner, that the annuity was "property," and property which "passed" under a voluntary settlement.

The word "passes" also received judicial construction in *Earl Cowley* v. *Commissioners of Inland Revenue*, and as this case is an extremely important one, the facts and history are here set out somewhat fully.

Earl Cowley v. *Commissioners of Inland Revenue.*

The second Earl Cowley, being tenant for life of real estate (under the will of Lord Mornington), with remainder to his first son (Lord Dangan) in tail, joined with such son and barred the entail by indenture of January 14th, 1887. By this indenture they conveyed the estates to such uses as they should jointly appoint, and in default to the second earl for life in restoration of his former life estate, with remainder to Lord D. in fee. By an arrangement entered into on June 8th, 1888, they jointly mortgaged the estates (by virtue of the absolute power of appointment) to secure 210,000*l.* to the Prudential Assurance Company. By indenture of June 9th, 1888, after reciting that Lord D. had joined in the said mortgage on the express agreement that the second earl would join in this indenture, the second earl and Lord Dangan (afterwards the third earl), in exercise of their absolute power of appointment in the indenture of January 14th, 1887, resettled the estates upon the following trusts (these trusts are taken verbatim from the Law Reports, [1899] A. C. 198): "The trusts upon which the estates were to be held were declared to be, *inter alia*, (1) subject to such powers and provisions as the appellant (the third earl) and his father (second earl) should by any deed or deeds, revocable or irrevocable, jointly appoint; (2) that the appellant, his executors, administrators, and assigns should receive during the life of the second earl in the events which happened a sum of 3,000*l.* a year; and (3), subject and charged as aforesaid, the continuance of the second earl's life estate in restoration and by way of confirmation of the life estate limited to him by the will of the Earl of Mornington, and, after the

second earl's death (4), upon trust for the appellant and his assigns during his life without impeachment of waste; and (5) from and after the appellant's death upon trust for the first and every other son of the appellant successively in tail male with remainders over."

On the death of the second Earl Cowley, the mortgages stood at 230,000*l.*, of which the Earl had received 199,987*l.* 11*s.* 8*d.*, and Lord D. the balance. In the Estate Duty Account, on the death of the second earl, Lord D. claimed deduction for the 230,000*l.* and 65,200*l.*, the capitalised value of the 3,000*l.* annuity.

Pollock and Bruce, JJ., held that the 230,000*l.* was a good deduction, and that Estate Duty was payable only on the value of the equity of redemption, but that the 65,200*l.* could not be deducted.

In the Court of Appeal, Smith, Rigby, and Collins, L. JJ., held that no deduction should be allowed in respect of either the mortgage debt or the annuity. Rigby, L. J., said: "*Passes* is not a technical word, but one capable of the widest possible meaning, and there is nothing to limit its meaning to property of the deceased." The House of Lords (Halsbury, L. C., and Lords Watson, Macnaghten, Morris, Shand, and Davey) held the mortgage was a good deduction, but the annuity was not.

Lord Halsbury said it was the *equity* of *redemption* which *passed* under *sect. 1* of the Finance Act, and if he were compelled to give a construction to 2 (1) (b), he would have come to the same conclusion, since the benefit accruing or arising to the third earl was only the value of the equity of redemption.

The report of this case in the Law Reports, [1897] 2 Q. B. 47, discloses the fact that the second earl covenanted to pay Lord D. the annuity of 3,000*l.* during the joint lives of the second earl and Lord Dangan, and it is understood that it was only in the event of the second earl making default in payment thereof that the annuity became a charge on the life estate of the second earl in the settled estates, although this fact does not appear in the report of the case before the House of Lords either as reported in the Law Reports, [1899] A. C. 198, or the Law Times Reports, 80 L. T. 361. Nevertheless, if a life tenant and remainderman of real estate now join in resettling the estates so that the remainderman is to receive an annuity charged on the fee of the estates (and not merely on the life interest of the life tenant) during the joint lives of the life tenant and remainderman, on the death of the life tenant

in ascertaining the value for Estate Duty, a deduction is allowed from the value of the settled estates of a notional slice equal to the capitalised value of the annuity.

Example:—

1. A. settled Blackacre on his son B. for life, remainder to his son C. in tail. B. and C. bar the entail and convey Blackacre (free from B.'s life estate) to trustees in fee simple to the use that C. shall receive 200*l.* per annum during the joint lives of B. and C., and subject thereto in trust for B. for life. Remainder for C. for life, remainder for C.'s first son in tail male, remainders over. On B.'s death Estate Duty is payable on Blackacre, and supposing the net rental is 1,000*l.* per annum, and its value is twenty years' purchase = 20,000*l.*, from this sum may be deducted 4,000*l.* (the capitalised value of the 200*l.* annuity), which is considered not to pass on B.'s death, leaving 16,000*l.* only liable to Estate Duty.
2. A. settled Whiteacre on B. for life, remainder to C. in tail. B. and C. bar the entail, and resettle the estates, subject to B.'s life interest; but B. charges his life estate with an annuity of 200*l.* per annum, in favour of C., during the joint lives of B. and C. No deduction in respect of this annuity can be taken against the value of Whiteacre on B.'s death.

In example No. 1 so much of Blackacre as escapes Estate Duty (viz., 200*l.* per annum) is liable to Succession Duty at 1½ per cent., and this duty is assessable on the life interest of C. on Form No. 6. If C. took in fee or in tail under the resettlement, the Succession Duty on the notional slice to produce 200*l.* per annum (viz., 4,000*l.*) would be assessable on the capital value under sect. 18 of the Finance Act, 1894, on Form No. 6—1. If B. dies on or after 30th April, 1909, so much of Blackacre as pays Estate Duty (viz., 16,000*l.*) is liable to 1 per cent. Succession Duty, under sect. 58 (2) of the Finance (1909–10) Act, 1910, assessable on C.'s life interest on Form No. 6.

It follows from the decision of the House of Lords in *Earl Cowley* v. *Commissioners of Inland Revenue*, that where a life tenant and a remainderman join in mortgaging the fee of an estate (by whatever conveyancing method it is carried out), the equity of redemption only is considered to pass on the death of the life tenant for Estate Duty purposes, unless the life tenant

has been indemnified from the payment of interest during his life, as in

Att.-Gen. v. *Lord Montagu.*

Walter Francis, Duke of Buccleuch (who died 16th April, 1884), by his will devised certain real estate, called the Ditton Estate, to his wife Charlotte Anne Duchess of Buccleuch for life (she died 28th March, 1895), remainder to his son, Lord Montagu, for life, remainder to his first son in tail male, viz., the Hon. J. W. E. D. Scott Montagu. By an indenture of the 28th May, 1888, the said Lord Montagu and his son (with the consent of the Duchess as protector of the settlement) barred the entail, and conveyed the said estates (subject to the life interest of the Duchess) to such uses as they should jointly by deed appoint remainder over. By an indenture of the 29th May, 1888, the Duchess, Lord Montagu, and his said son mortgaged the fee of the Ditton Estates to secure the sum of 27,000*l.*, lent to Lord Montagu and his son, who jointly and severally covenanted to repay same with interest. The Duchess did not covenant to repay either principal or interest.

By another indenture of the 29th May, 1888, Lord Montagu and his son covenanted to keep the Duchess indemnified against all actions, suits, or demands against her or the Ditton Estate, in respect of such mortgage, and they assigned an annuity of 1,500*l.* (charged on the Clithero Estate), to which they were entitled under said will, to trustees as security for the due performance of their covenants.

Held (by Phillimore, J.) that Estate Duty was payable on the death of the Duchess of Buccleuch in 1895 on the principal value of the Ditton Estate without any deduction for the mortgage.

The Court of Appeal (Williams, Stirling, and Mathew, L. JJ.) reversed this decision, and held the equity of redemption only passed on the death of the tenant for life, and upon that alone was Estate Duty payable.

But the House of Lords (Lords Halsbury, Davey, James, and Robertson) reversed the decision of the Court of Appeal, and restored the judgment of Phillimore, J. Lord Davey said, the effect of the arrangement was, the Duchess had a beneficial interest in the whole of the income, notwithstanding the mortgage; the equity of redemption passed under sect. 1, and to the extent of the interest on the mortgage, the case came under sect. 2 (1) (b).

For an example of what passes when the deceased charged his real estate with annuities and capital sums on the deaths of the annuitants and then settled the same on himself for life with remainders over, see *De Freyne* (*Lord*) v. *Inl. Rev. Commrs.*

Goodwill of a business to which the surviving partners became entitled under the terms of partnership articles on the death of one of the partners was held not to be property passing under sect. 1, but fell within the terms of sect. 2 (1) (b), although not liable to Estate Duty in that individual case. (See *Att.-Gen.* v. *Boden.*)

It is of course important to ascertain whether the property does in fact "pass" or simply arises or becomes payable on the death, for example, a policy of insurance. In such a case the moneys, although not earmarked, exist prior to the death of the assured in the coffers of the insurance company, and on the death of the assured become payable to the person entitled, they change hands on the death, from one person (or company) to another, and it is therefore somewhat difficult to understand why they should be considered not to "*pass*," especially as Rigby, L. J., said in *Earl Cowley* v. *Commissioners of Inland Revenue*, "*passes* is not a technical word, but one capable of the widest possible meaning"; and see *Att.-Gen.* v. *Dobree* on p. 67. This is said with deference, because *Att.-Gen.* v. *Murray* (see p. 68) was not argued under sect. 1, as it would have been if policy moneys were considered to "*pass*" on the death of the assured.

For examples of cases of property passing *after an interval*, see *Att.-Gen.* v. *Gell*, and

Ring v. *Jarman.*

The facts of this case are as follows:—A. died in 1850, devising his real estate to trustees, upon trust to accumulate the rents for twenty-one years, and then to convey the estates and accumulations to the person or persons who should then answer the description of his "heir or co-heiresses at law." He died a bachelor, leaving B. his heir. B. died in 1865. Four co-heiresses of A. succeeded in 1871, when the trust for accumulation ceased. Held that they took a succession referable to the death of B. "after the interval" between the death and the expiration of the period of accumulation.

Where a life tenant, dying before the 30th April, 1909, surrenders his life interest to the remainderman more than twelve months before his death, the property does not "*pass*" on his death. (See *Att.-Gen.* v. *Beech*, and this decision is not

affected by sect. 11 (1) of the Finance Act, 1900.) If the life tenant dies on or after 30th April, 1909, it is necessary that the surrender should have taken place more than three years before his death, or that the surrender should have been made before the 30th April, 1908, or should have been for public or charitable purposes, in order to escape Estate Duty. (See sect. 59 (1) of the Finance (1909–10) Act, 1910.) The extension to three years is, however, not to prejudice mortgagees or purchasers whose interests arose before 30th April, 1909. (See sect. 64 of that Act.)

Where a "deceased person" had, at the time of his own death, a life interest in a settled fund, together with an absolute interest expectant on his own death in a share of such fund, the share in which he had this absolute expectant interest should be treated for all the purposes of the Finance Acts as part of the free estate of the deceased. The "passing" is then considered to be under the deceased's will, or intestacy, and not under the settlement.

Example :—

A., by settlement of 1872, settled 1,000*l.* on himself for life (died 1879, Succession Duty paid on the capital at 1 per cent.), and then on his son B. for life (died 1912), and then equally amongst B.'s three children, C., D., and E. C. died 1883 intestate, leaving his father B. entitled to his share as next of kin. Then two-thirds only are considered to pass on B.'s death under the 1872 settlement for the purposes of aggregation and of the allowance under sect. 21 of the Finance Act, 1896 (in respect of the Succession Duty paid in 1879). The one-third passes under B.'s will or intestacy, and there is, therefore, no allowance under sect. 21 of the Finance Act, 1896, in respect of the Succession Duty paid in 1879 on this one-third.

"**Graduated rates hereinafter mentioned.**"—These are set out in sect. 17 (see p. 264), but all property passing on the death, in respect of which Estate Duty is payable, is to be aggregated as mentioned at sect. 4 in order to determine this rate.

"**The existing duties mentioned in the first schedule to this Act.**"—These are :—

(1) Probate Duty and Inventory Duty (under the Customs and Inland Revenue Act, 1881).

(2) Account Duty (under the same Act, sect. 38, amended by sect. 11 of the Customs and Inland Revenue Act, 1889).

(3) The additional Succession Duties imposed by the Customs and Inland Revenue Act, 1888, s. 21 (*i.e.*, ½ per cent. for lineals, and 1½ per cent. for other persons).

(4) The temporary Estate Duties imposed by the Customs and Inland Revenue Act, 1889, ss. 5 and 6 (*i.e.*, the additional 1 per cent. upon personal estates and successions exceeding 10,000*l.* of persons dying prior to 1st June, 1896).

(5) The 1 per cent. Legacy and Succession Duties under the will or intestacy of the deceased, or under his disposition, or any devolution from him under which respectively Estate Duty has been paid, or under any other disposition under which Estate Duty has been paid.

It must be noticed that the 1 per cent. Legacy and Succession Duties referred to are the duties imposed by the Stamp Act, 1815 (55 Geo. 3, c. 184, Sch. Part III.), and the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), respectively. These duties are quite distinct from the new Legacy and Succession Duties at 1 per cent. imposed by the Finance (1909–10) Act, 1910, s. 58 (2).

An example will perhaps best explain the actual working of this in practice.

A., by settlement of 1856, settles personal estate on himself for life (dies 1905), remainder in events to his four children, B., C., D., and E.

(1) B. died in 1872, having previously, by settlement of 1866, settled his one-fourth share on himself for life, remainder in events to his son F. absolutely.

(2) C. died in 1874, giving all his property by will (proved in 1874) to his son G. absolutely.

(3) D. died in 1892, leaving personalty valued at over 10,000*l.* and above reversion. He bequeathed all his estate to his wife.

(4) E. died in 1895. His reversion is included in his Inland Revenue affidavit and Estate Duty paid thereon. He bequeathed all his estate to his wife.

Estate Duty is payable on the death of A. *under the* 1856 *settlement* on all the funds except E.'s share.

(See *Commissioners of Inland Revenue* v. *Priestley, In re Studdert.*)

(1) The Succession Duty at 1 per cent. is not payable by F. under B.'s 1866 settlement, because the Estate Duty

is payable by the same death on which this succession opens, although under a *different* disposition, namely, the 1856 settlement, and not the 1866 settlement.

(2) Probate Duty is payable on C.'s share under his will, if not already paid when in reversion, on the probate of C.'s will, and the 1 per cent. Legacy Duty is not payable by G.

(3) Probate Duty and Temporary Estate Duty are payable on D.'s share as passing under his will.

(4) E.'s share has not paid Estate Duty on A.'s death under the 1856 settlement, yet the 1 per cent. Succession Duty is not payable thereon under the 1856 settlement. The Estate Duty paid on E.'s death is considered to exempt E.'s share from such duty. At one time the 1 per cent. duties at Nos. 1, 2, and 4 were thought to be payable.

In the example given, if A. dies on or after the 30th April, 1909, Estate Duty is payable on all the funds including E.'s share (see sect. 55 of the Finance (1909–10) Act, 1910), and if the total value of the funds is over 15,000*l.*, Succession Duty at 1 per cent. is payable on the whole under sect. 58 (2) of that Act.

In order to escape the Succession Duty at 1 per cent. imposed by the Succession Duty Act, 1853, the property must have *paid* Estate Duty (except in those cases mentioned on p. 2 where the duty is chargeable although none is payable). See

In re Trevor B. Hamilton's Estate.

An Estate Duty account of landed property which passed under the marriage settlement of, and on the death of, Trevor Richard Hamilton (the father of Trevor B. Hamilton), was delivered by the trustees, in which the value of the lands was stated as 6,420*l.* 17*s.* 3*d.*, and deductions were claimed and allowed therefrom to the amount of 5,579*l.* 2*s.* 9*d.*

These amounts deducted included a mortgage debt of 4,000*l.*, created by the tenant for life and persons entitled in remainder, and two sums of 500*l.* each and a further sum of 100*l.* advanced during the life of the deceased for the benefit of three of the children of the marriage.

The Commissioners of Inland Revenue lodged a claim for Succession Duty in respect of these sums in the Irish Land Commission Court. The trustees objected to the claim on the

ground that the payment of Estate Duty upon the portion of the property liable to such duty under sect. 1 of the Finance Act, 1894, brought the mortgage debt within the exemption contained in that section, as the sums upon which Succession Duty was claimed could not be segregated from the rest of the property.

On behalf of the Commissioners it was urged that the exemption in sect. 1 only applied to cases where Estate Duty had been paid, and not to the four sums in question, that Succession Duty attached from the date of the settlement, and that, by sect. 15 of the Succession Duty Act, 1853, any alienation or acceleration of interest did not relieve the property from the charge of duty, and under sect. 34 of that Act the mortgage could not be deducted from the succession. It was held by Meredith, J., sitting as Judicial Commissioner, on 1st November, 1905, that sect. 1 of the Finance Act, 1894, had no application, and did not relieve the successor from the payment of Succession Duty, and that *In re Peyton*, 7 H. & N. 265, made it impossible to argue that Succession Duty was not payable.

It is considered that the relief from Succession Duty afforded by this section applies if Estate Duty is paid on the proceeds of sale of the property. For example, see No. 3, on p. 296.

2.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

This section is meant (per Lord Macnaghten in *Earl Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198) to sweep in a few cases which were thought, perhaps, to be within the spirit, though not within the letter, of the proposed enactment, or else to lead to evasion if not made equally subject to Estate Duty. This seems to be so far correct, but Lord Macnaghten states in the same case that sects. 1 and 2 are *mutually exclusive*, and if a case "falls within sect. 1 it cannot also come within sect. 2." With deference this statement seems hardly an accurate one, as the following few examples will show:—

(1) A. settles property on B. for life (dies 1904), remainder as B. should absolutely by will appoint (not exercised), in default to C. in fee. This is surely an example of property passing on the death of B. within sect. 1, and at the same time property of which B. was competent to dispose under sect. 2 (1) (a). In most

of the cases in actual practice an absolute power of appointment is preceded by a life estate to the donee of the power.

(2) A. settles property on B. for life (dies 1904), remainder to C. in fee. B. here has an interest in the property which ceases on his death, and a benefit accrues to C. by the cesser of such interest. Therefore this would appear to be liable to Estate Duty under sects. 1 and 2 (1) (b).

(3) A. settles, by voluntary settlement, 1,000*l.* on himself for life (dies 1904), and on his death to his son B. absolutely. This sum would have been required to be included in an account and pay Account Stamp Duty on A.'s death, under the Customs and Inland Revenue Act, 1881, s. 38. Therefore it is liable to Estate Duty on A.'s death under sects. 1 and 2 (1) (c).

(4) A. purchases a 40*l.* annuity for the longest lives of himself and his wife B., payable to himself for life (dies 1904), and on his death to be paid to B. for life (she survives).

This annuity would seem to be liable to Estate Duty on A.'s death as property passing under sect. 1, and also as an annuity provided by the deceased under sect. 2 (1) (d).

The above few examples show that numerous cases fall within the words of both sects. 1 and 2 at the same time.

Mr. Justice Channell, in *Att.-Gen.* v. *Dobree*, said he found great difficulty in following the exact, literal words of Lord Macnaghten's judgment in *Earl Cowley* v. *Commissioners of Inland Revenue*, and probably Mr. Justice Channell's view, that Lord Macnaghten meant, once a case came within sect. 1 you need not look at sect. 2, is the correct one. It is, of course, obvious that a number of cases do fall within sect. 2 that do not fall within sect. 1, and it was to catch such cases that sect. 2 was framed.

(a) Property of which the deceased was at the time of his death competent to dispose.

This is defined in sect. 22 (2) (a) as follows:—

(a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or

not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or as mortgagee.

Further, by sect. 22 (2) (c) money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

And by sect. 23 (15), as regards Scotland, an institute or heir of entail in possession of an entailed estate shall, whether *sui juris* or not, be deemed, for the purpose of this Act, to be a person competent to dispose of such estate.

The following are examples of property of which a person is competent to dispose:—

(1) His free real and personal estate whether in possession or reversion;
(2) His severable share of property of which he was joint tenant in possession;
(3) Property, in possession, over which he has a general or absolute power of appointment by deed or will.

If the absolute power of appointment is subject to an existing life interest at the death of the donee of the power, and the power is *not* exercised and subsequent limitations continue to subsist under the settlement, the property is not deemed to pass on the death of the donee. (See notes at sect. 5 (3), Finance Act, 1894.)

For instance, A. settles property on B. for life (living 1905), remainder to C. for life (dies 1903), remainder as C. should absolutely appoint (power *not* exercised), remainder to D. in fee. This property is not deemed to pass on C.'s death.

In *Bristow* v. *Skirrow*, 27 Beav. 585, where a testator by his will gave leaseholds upon the same trusts as his wife should by her will declare with respect to her residuary personal estate, this was held to give the wife an absolute power of appointment.

It was decided for the purpose of the Legacy Duty Act, 1796 (*Platt* v. *Routh*), that the exclusion by the donor of certain persons from benefiting, under the exercise of an otherwise general power, did not prevent it from being a general power for the purposes of the Legacy Duty Act.

However, it is conceded that where the deceased has a power of appointment which (a) excludes certain persons, or (b) excludes the donee of the power himself, or (c) is only exercisable

with certain consents, such a power does not make the deceased competent to dispose within the meaning of the Finance Acts.

(4) Money which he has a general power to charge on property.

(5) Real property of which he is tenant in tail (a) in possession or (b) in remainder, but as to (b), having regard to sect. 5 (3) it is not deemed to pass on his death if his interest falls before it becomes an interest in possession and subsequent limitations under the settlement continue to subsist.

(6) Property over which the deceased had a power of revocation in a settlement.

(7) Property which belongs to the deceased by virtue of sect. 33 of the Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26).

Sect. 33 is as follows:—

Where any person, being a child, or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed, for any estate or interest, not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

This makes Estate Duty payable on the death of the child or other issue. See

Re John Scott jun. (deceased).

The facts are as follows:—

On the 12th May, 1899, John Scott, senior, died, having by his will devised certain property in the City of London to the use of his son, John Scott, junior, his heirs and assigns for ever. The value of such property was assessed to Estate Duty at 80,000*l.*, and Estate Duty was paid thereon as property passing on death of John Scott, senior. John Scott, junior, died on 22nd January, 1899, in the lifetime of his father, but leaving a daughter, who was living on 12th May, 1899, and therefore the devise to John Scott, junior, did not lapse.

Mr. Justice Darling held, further Estate Duty was payable on the property on the death of John Scott, junior, because John Scott, junior, was "competent to dispose" within sect. (2) (1) (a) of Finance Act, 1894.

Channell, J., agreed, following *Executors of Perry* v. *The Queen*, which decided that under similar circumstances before the Finance Act, 1894, Probate Duty was payable on both deaths. Channell, J., said, "The rate on the property therefore will be arrived at by taking the rate applicable to this property when aggregated with the other property of John Scott, junior. I do not know whether the Crown claims any additional duty, that is, at a higher rate than paid on the 16,000*l.* property of John Scott, junior, by reason of the aggregation with it of this freehold property, but I do not think the Crown entitled to such a higher rate on the 16,000*l.* . . . This case should be dealt with as coming under sect. 7, sub-sect. 6 (a) and (b), which provision happens to fit this case."

The Court of Appeal (Smith, M. R., Collins and Stirling, L. JJ.) affirmed this decision, but did not express any opinion on Channell, J.'s, view as to aggregation, which is therefore not followed. The property falling in was therefore aggregable with John Scott, junior's, other assets.

It would seem that the actual date of the death of the child or other issue is not notionally altered, by sect. 33 of the Wills Act, for any other purpose therefore the liability to death duties of the accretion to the estate of the predeceasing child or other issue is to be determined by the Acts in force at the actual date of his death. So that if, in a case similar to *Re John Scott, jun.* (*deceased*), the child had died prior to the 2nd August, 1894, the father dying on or after that date, Probate Duty and not Estate Duty would be payable on the death of the child, who notionally has died after the father.

However, Probate Duty was not payable in respect of personal estate bequeathed to the executors or administrators of a person who predeceased the testator (see *Att.-Gen.* v. *Loyd* and *Lord Advocate* v. *Bogie*), nor is Estate Duty payable in such cases.

Lord Advocate v. *Bogie.*

A testatrix, Miss Jessie Scott, bequeathed a share of her residuary estate to Robert Methven, and in the event of his predeceasing her (which happened) to his "executors and representatives whom I do hereby appoint to be my residuary legatees."

It was held (by the House of Lords) that only one Probate and Legacy Duty was payable, namely, under the will of the testatrix, and that no second duty under the will of R. Methven was payable, as the property in question was not

part of his estate at the time of his death, nor personal estate which he had "power to dispose of" within the Revenue Act of 1845 (8 & 9 Vict. c. 76).

The following case is peculiar to Scotch law :—

Lord Advocate v. *Gunning's Executors.*

In this case Dr. Gunning, a domiciled Scotsman, died in London on the 22nd March, 1900, survived by his widow, who on the 19th July, 1900, executed a trust settlement, in which it was recited, that her husband had made over to her certain funds as her absolute property, on the understanding that she should apply or bequeath them in the terms of his wishes, verbally expressed to her. She then proceeded to declare her resolve to settle 10,000*l.* in the hands of trustees for a niece and a grandniece of her husband. According to Scotch law, donations *inter virum et uxorem* are revocable by the donor at any time of his or her life. Estate Duty was therefore claimed on all the donations which Dr. Gunning had made to his wife, on the ground that he could have revoked them at any time during his life and was competent to dispose of them at his death.

On the 16th November, 1906, the Lord Ordinary, Lord Johnstone, in Scotland gave judgment against the Crown. On appeal to the First Division, the Crown restricted the claim to the funds made over by Dr. Gunning to his wife during her marriage as set out in the trust settlement.

The case was heard in the First Division of the Court of Session on the 9th March, 1907, before the Lord President and Lords Kinnear, Pearson, and McLaren, when the Court recalled (reversed) the Lord Ordinary's judgment and gave judgment in favour of the Crown, on the summons as restricted.

The Court held the words of sect. 22 (2) (a) of the Finance Act, 1894, applied to Dr. Gunning's power of revocation, and that he was competent to dispose of the donation because he might at his pleasure have revoked it.

The words "competent to dispose by will of a continuing interest" in sect. 21 of the Succession Duty Act, 1853, were held to refer to the quantity of interest and not the mental capacity of the individual, so that a lunatic and a married woman were held to be competent to dispose for the purpose of that sect. of real estate they succeeded to in August, 1853. See *Att.-Gen* v. *Hallett.*

It follows that a lunatic and a married woman would be deemed "competent to dispose" under sect. 2 (1) (a) of his or her own property, and the latter even though not entitled for her separate use.

PROPERTY OF MARRIED WOMEN DYING AFTER THE 1ST AUGUST, 1894.

1. *As to real and personal property to which she is entitled for her separate use.*

(a) *If she disposes thereof by will.*—All such property is liable to Estate Duty under sect. 2 (1) (a), because the deceased is competent to dispose thereof. A grant of probate is necessary as to such personal estate, and if she dies after the 1st January, 1898 (the commencement of the Land Transfer Act, 1897), a grant is necessary, even if she leaves only real estate.

(b) *If she dies intestate.*—All such property is liable to Estate Duty because the deceased is competent to dispose. A grant of letters of administration is necessary as at (a) except as to her chattels real (whether in possession or reversion) which vest in her husband *jure mariti*, without the necessity of such grant.

2. *As to* (a) *real and* (b) *personal property to which she is entitled* not *for her separate use.*

(a) *Real Estate.*—Estate Duty is payable thereon under sect. 2 (1) (a) because the wife would be competent to dispose thereof if she were *sui juris*, and by sect. 22 (2) (a) "A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property."

(b) *Personal Estate.*—The same principle applies as above, except that if the husband has once reduced his wife's personal estate into his own possession, she ceases to have any interest or estate therein, and then Estate Duty would not be payable.

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest

in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole.

This sub-section deals with the cesser of an interest in "property," such as life interests, life annuities, or rent-charges, also leases for lives, but as to the last, see sect. 3.

Sect. 14 of the Finance Act, 1896, prevents Estate Duty attaching on a death which simply enlarges the life interest of a settlor to an absolute one.

By sect. 15 (4) of the Finance Act, 1896, it is provided that where the deceased was entitled by law to the rents and profits of real property (as defined by sect. 1 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51)), of his wife and has died in her lifetime, such property shall not be deemed to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

Sect. 15 (1) of the Finance Act, 1896, prevents Estate Duty attaching on a death (after that Act) by which property reverts to the settlor.

In general Estate Duty is not payable on the *cesser* of an annuity secured only by a personal covenant, because there is no property out of which it issues, but there may be a claim for Estate Duty under sect. 11 (1) of the Finance Act, 1900 (as amended by sect. 59 of the Finance (1909–10) Act, 1910), where a life tenant surrenders his life interest to a reversioner in consideration of an annuity secured by the personal covenant only of such reversioner.

If an annuity (whether provided by the deceased or not) is secured by a *personal* covenant of another person and payable during, say, the longest life of the deceased and a third person, and is limited to the deceased for life and then to such third person for life, Estate Duty is considered to be payable on the death of the deceased on the actuarial value of the annuity for the life of the survivor.

If such an annuity is purchased (not by the deceased) from the Government or an insurance company, and limited to the deceased for life and then to such third person for life, Estate Duty is (it is conceived) likewise payable on the death of the deceased on the annuity as passing under sect. 1 of the Finance Act, 1894. The purchase of the annuity is regarded as an investment of capital to be repaid by instalments of principal

and interest, and is analogous to the settlement of any other wasting security, such as leaseholds.

Of course, if the deceased was to purchase such an annuity for the joint lives of himself and another and the life of the survivor, secured by the covenant only of a third person, Estate Duty would be payable on the deceased's death under sect. 2 (1) (d).

Examples :—

1. A. on the marriage of his son B. to C. covenanted to pay an annuity of 100*l.* during his (A.'s) life to be held in trust for B. for life, and then to C. for life. On B.'s death in A.'s lifetime, Estate Duty is payable on the value of such annuity passing to C.
2. A. purchased from the Post Office an annuity of 100*l.* for the joint lives of B. and C. and the life of the survivor, and directed that the annuity should be paid to B. for life, and then to C. for life. On B.'s death in C.'s lifetime Estate Duty is payable, under sect. 1 of the Finance Act, 1894, on the saleable value of the annuity passing to C. for life.
3. A. purchased an annuity of 100*l.* from B. for the joint lives of A. and his wife C. and the life of the survivor, and payable to A. for life and then to C. for life, and secured merely by B.'s covenant. Estate Duty is payable on A.'s death on the saleable value of the 100*l.* annuity for C.'s life under sect. 2 (1) (d).

As to claims for Estate Duty on cessers of annuities.— 1. If the annuity is charged on the income only of property, the claim for Estate Duty would seem to arise under sect. 2 (1) (b) of the Finance Act, 1894.

2. If the annuity is charged on capital as well as income and is so charged at the death of the annuitant, then :—

(a) If the income of the property charged is the equivalent of the annuity, there would appear to be a claim for Estate Duty under sect. 1 of the Finance Act, 1894 ;

(b) If the income of the property is more than sufficient to yield the annuity and a part only is required to meet it, the claim for Estate Duty arises under sect. 2 (1) (b) on the capital necessary to produce the annuity ;

(c) If the income is less than the annuity the claim for Estate Duty is on the entire property under sect. 2 (1) (b).

3. If the annuity is payable out of capital only, the claim for Estate Duty is on the entire capital of the property charged under sect. 2 (1) (b).

If the property charged has paid Estate Duty (see sect. 5 (2) of the Finance Act, 1894), or been liable to pay Account Stamp Duty or Probate Duty (see sect. 21 (1) of the Finance Act, 1894) on the death of the grantor, and no deduction has been taken in respect of the annuity against the said duties on his death, then no Estate Duty will be leviable on the cesser of the annuity. (See also *Att.-Gen.* v. *Hannen.*) If, however, the annuitant died after the 15th August, 1914, the relief conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894, was abolished by sect. 14 of the Finance Act, 1914.

For an example, see

Att.-Gen. v. *Watson.*

A testator, who died on the 28th November, 1914, by his will bequeathed an annuity of 1,000*l.*, free of duty, to his sister for life or for such less period as in the will was mentioned. He directed the annuity should commence from his death and should be paid out of his residuary estate, and primarily out of the income thereof. There was no direction in the will to set apart a capital sum to provide the annuity. The annuitant died two days after the testator, and her representatives were accordingly entitled to an apportionment of the annuity.

The Crown claimed Estate Duty on the annuitant's death (being after 15th August, 1914. See sect. 14 of the Finance Act, 1914) in respect of the cesser of her annuity.

Held (on the 9th May, 1917) that the annuitant had an interest in the testator's residuary estate within the meaning of sect. 2 (1) (b) of the Finance Act, 1894.

Lush, J., said at [1917] 2 K. B. p. 431, "On behalf of the defendants it has been contended that the annuitant had no interest in the corpus, and that no annuitant can be said to have an interest in the property out of which the annuity is payable unless the property has been actually appropriated and set apart to answer the annuity. . . . In my judgment that is not the true interpretation to be placed upon sect. 2 (1) (b) of the Finance Act, 1894. . . . I think one is bound to construe the words 'had an interest' in the wider sense, and not to restrict the words and put upon them the narrower meaning for which [counsel] has contended. . . . In my judgment this annuitant had, according to the ordinary use of language, an

interest in the corpus of this property; she had an annuity accruing from day to day, payable out of the property, and it was to that property that the annuitant would necessarily look for the payment of her annuity. It is true she had no estate in the property, but she had an interest in it because that was the source of the annuity bequeathed to her by the testator."

For the purposes of aggregation it is now conceded that the capital necessary to produce the annuity, even when the annuity is given "*simpliciter*," is "settled property." This is a benefit to the taxpayer.

The following case was decided (in part) under this subsect. :—

Lord Advocate v. *McTaggart Stewart.*

Three separate and distinct issues arose in this case.

1. Sir John McTaggart, heir of entail in possession of the entailed estate of Ardwell, died on the 13th August, 1867, leaving two daughters surviving, Mrs. Ommanney McTaggart and Mrs. Church, the former being the heiress next entitled to succeed him in the entailed estate. He left a will, by which he directed his trustees to accumulate the income of his residuary estate, during the life of his daughter, Mrs. Ommanney McTaggart, and on her death to apply the accumulated fund in paying off the debt on Ardwell, and the surplus to be expended in the acquisition of other lands to be entailed with it. By operation of the Thellusson Act (39 & 40 Geo. 3, c. 98) the direction to accumulate ceased to be operative on the 13th August, 1888, from and after which date the income of the whole fund then accumulated, as intestate succession, fell and belonged to his two daughters as next of kin at his death, viz., Mrs. Church who died in 1877, and Mrs. Ommanney McTaggart who died on the 25th September, 1902. The effect of the Thellusson Act was not noticed until Mrs. O. McTaggart's death, when the amount of the unlawful accumulation was about 49,000*l.* On Mrs. McTaggart's death the lawful accumulations (*i.e.*, those to 13th August, 1889) fell to be applied in paying off the debt, 20,000*l.*, on Ardwell and in the acquisition of other lands to be entailed with it.

It was contended on behalf of the Crown that the whole of the lawful accumulations and the residue of Sir J. McTaggart's estate passed on Mrs. McTaggart's death within sect. 1 of the Finance Act, 1894, and were chargeable with Estate Duty

accordingly. Settlement Estate Duty was also claimed on the same fund.

The Lord Ordinary upheld the contention of the Crown, and found that the fund passed on Mrs. McTaggart's death within the meaning of the Finance Act, 1894, and that having regard to sect. 23, sub-sect. 14, of the said Act, the exemption in sect. 21 (1) did not apply to the sum of 29,626*l.* which the trustees had expended in the purchase of lands or to the balance of the trust funds still held by them, but he reserved the question of the liability to Estate Duty of the 20,000*l.* which had been applied in paying off the debt on Ardwell.

The defendants reclaimed (appealed).

At the hearing on the reclaiming note, before the First Division of the Court of Session, an alternative claim was made by the Crown under sect. 2 (1) (b).

The First Division on the 13th March, 1906, affirmed the findings of the Lord Ordinary, but on different grounds. The Lord President was of opinion that the funds did not "pass" on Mrs. McTaggart's death, and said: "Although they did not pass, I am of opinion that in view of the second section they were 'deemed to pass,' because in the terms of that Act they were property in which a person other than the deceased (*i.e.*, the trustees) had an interest which ceased on the death of the deceased, and duty falls to be paid on the extent to which a benefit accrues from the cesser of that interest, *i.e.*, upon the whole amount which then becomes a benefit to the heir of entail. The question of exemption under sect. 21 (1) does not arise in this view."

As to the 20,000*l.* expended in paying off the debt on Ardwell, the First Division treated sect. 21 (1) as not applicable, apparently on the ground that that sum was not "settled property."

2. This is quite a distinct issue which arose by the same death.

By deed of gift of 27th August, 1894, Mrs. O. McTaggart gratuitously conveyed to her daughter, Lady Stewart, and to the latter's husband (Sir Mark Stewart) the whole personal and moveable estate belonging to her, including her shares and investments, the furniture, &c. in Ardwell House, and the live and dead stock and crops at Ardwell. This deed was duly delivered and took immediate effect.

By deed of propulsion dated 23rd May, 1895, she propelled the estate of Ardwell, of which she was heir of entail in possession, to her said daughter the next heir.

Thereafter Lady Stewart received the rents of the estate, and the establishment of the mansion house was her husband's. The furniture had already become theirs. Mrs. McTaggart after the deed of propulsion resided with them at Ardwell House; after 1901, becoming bedridden, she occupied one bedroom in the mansion house.

On the death of Mrs. Ommanney McTaggart, on the 25th September, 1902, the Crown claimed Estate Duty on (a) the estate of Ardwell, and (b) the furniture in Ardwell House, upon the ground that the surrender and gift was not to the entire exclusion of the deceased, and having regard to sect. 2 (1) (b) of the Finance Act, 1894, and sect. 11 of the Finance Act, 1900, as to the estate, and to sect. 2 (1) (c) of the Finance Act, 1894, as to the furniture, the property must be deemed to pass on her death.

The Lord Ordinary (Lord Pearson) found in favour of the Crown on both points. On appeal, the First Division of the Court of Session reversed this decision and gave judgment against the Crown on both points, but found that Succession Duty was payable on the entailed estate.

The Lord President said (*inter alia*): "The question seems to me always to revert to a simple question of fact, namely, after the cession, was she the old proprietrix retaining a benefit of her old estate, or was she a guest getting, as a guest, what the new proprietrix chose to give her? As a juryman, reading the minute of admissions, I pronounce unhesitatingly for the latter view."

3. This is another distinct issue in the same case.

As mentioned above, by gratuitous deed of gift dated August 27th, 1894, Mrs. Ommanney McTaggart conveyed to Sir Mark and Lady Stewart her whole personal and moveable estate. This was sufficient to carry the moiety of the unlawful accumulations of Sir John McTaggart's estate (see p. 26), to which she (Mrs. McTaggart) was entitled as one of his next of kin. Until her death, however, the effect of the Thellusson Act on Sir John McTaggart's testamentary direction to accumulate was not noticed, and it was not until that event happened that it was realised that any part of the accumulations belonged to her, and, through her, to her donees. In these circumstances payment of Estate Duty was claimed on her moiety of the accumulations under sect. 2 (1) (c) of the Finance Act, 1894, on the ground that there was no possession and enjoyment of these by her donees (Sir Mark and Lady Stewart) until after her death.

The Lord Ordinary gave judgment for the Crown, and the

First Division on appeal, on the 13th March, 1906, affirmed his judgment.

Notwithstanding this case, it is considered that Estate Duty is not payable on accumulations derived from property which has paid Account Stamp Duty, Probate Duty, or Estate Duty, unless the deceased has been competent to dispose since such payment, or has died after the 15th August, 1914. The case of *Inland Revenue* v. *Dick's Trustee*, 44 Sc. L. R. 567, and the remarks of Rigby, L. J., in *Att.-Gen.* v. *Dodington*, [1897] 2 Q. B. 373, at p. 383, approved by the House of Lords in *Commissioners of Inland Revenue* v. *Priestly*, [1901] A. C. 208, militate against a claim based on the view that accumulations are a distinct property from the property out of which they flowed.

"**To the extent to which a benefit, &c.**"—This is explained by sect. 7 (7) as follows: The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

The true test is the nature of the interest enjoyed by the deceased, or some other person, and not the benefit taken by the successor.

Re Thomas Townsend (deceased).

Thomas Townsend (died 10th January, 1892) by his will devised and bequeathed to his trustees all his real and residuary personal estate, upon trust for sale and investment, and out of the income thereof to pay an annuity of 500*l.* to his widow, Sarah Townsend, for life (she died 29th May, 1900), and to pay the residue of the income to his eight children in equal shares, and after her death 9,600*l.* out of the trust fund, and eight-ninths of any excess were given to the said eight children in equal shares, the remaining one-ninth of such excess was given equally to the children of a deceased son. Succession Duty at 1½ per cent. was duly paid on the testator's death on the proceeds of the real estate, less the value of the widow's annuity.

The Commissioners of Inland Revenue, on the death of the widow, claimed Estate Duty on the entirety of the trust estate

so far as attributable to the real estate of the testator, subject to an appropriate allowance in respect of the Succession Duty, as upon property passing within the meaning of the Finance Act, 1894. Held (by Kennedy and Phillimore, JJ.) that Estate Duty was payable only in respect of (a) the cesser of the 500*l.* annuity as a benefit to the children, and (b) on one-ninth of the excess of the trust funds beyond 9,600*l.* (of course in each case so far only as was attributable to the proceeds of sale of the real estate) which "*passed*" on the death of the widow to the grandchildren, and that the residue of the trust funds passed to the eight children on the death of the testator, and not on the death of his widow.

There must be a benefit to some person, although not necessarily to the owner of the property. See

Lord Advocate v. *Maclachlan.*

The facts are as follows :—

R. Maclachlan, the fee simple owner of lands in Argyleshire, in 1823 burdened them with an annuity of 800*l.* to his widow, Mrs. Helen Maclachlan. On his death he was succeeded by his brother, George Maclachlan, who in 1874, by bond of annuity, burdened the estate to the extent of a further 800*l.* per annum to his widow, Mary Maclachlan, to be restricted to 400*l.* per annum during the life of the previous annuitant. By trust disposition and settlement of even date, he directed his trustees to pay to his widow an additional annuity of 400*l.*, which he charged on legacies of 5,000*l.* left by him to his younger children. George Maclachlan died in 1887, Helen Maclachlan in 1895. The Crown claimed Estate Duty on Helen Maclachlan's death against the owner of the lands under sect. 2 (1) (b) on the cesser of the 800*l.* annuity capitalised under sect. 7 (7) (b) of the Finance Act, 1894. It was contended that the benefit arising to the defendant, the person entitled to the estates, was only the net sum of 400*l.* per annum. It was held by the First Division of the Court of Session that the claim was well founded, the criterion of value being the interest enjoyed by the deceased, and not the benefit taken by the successor. The owner of the real estate would, of course, it is conceived, be entitled to recover from Mrs. Mary Maclachlan interest during her life on a proportionate part of the Estate Duty on the principle laid down in *Re Parker Jervis ; Salt* v. *Locker.*

It will be observed there was a benefit as to 400*l.* per annum

to Mrs. Mary Maclachlan, and as to the balance to the owner of the estate.

It is conceived that, speaking generally, to the extent that there is no benefit (either immediately or after the expiration of a period of years) to any person there is no charge of Estate Duty. See *In re Tattersall's Settlement, Public Trustee* v. *Tattersall*, where no claim for Estate Duty was made against the husband, he having been entitled to the same income before and after the death of his wife.

Vaughan Williams, J., in *Att.-Gen.* v. *Wood*, held that in order to ascertain the value of a benefit accruing under sect. 2 (1) (b), recourse was to be had to the measure supplied by sect. 7 (7), and if that section could not be applied, no duty was leviable; but he expressly stated he was not construing sect. 7, and that for the purposes of that case (*Att.-Gen.* v. *Wood*) it was not necessary for him to construe it.

If the deceased never became entitled to receive any income in respect of his life interest, then no Estate Duty is payable. See *In re Harrison, Johnstone* v. *Blackburn, &c., Royal Infirmary.*

It is material, of course, to ascertain whether any interest does, in fact, cease at the death, or whether it has ceased prior to the death.

For example, the life tenant may have surrendered his life interest to the remainderman.

See

Att.-Gen. v. *Beech and another.*

Mrs. Beech was tenant for life under her marriage settlement of 13th June, 1852, with remainder to her issue as she should appoint. By an indenture of the 21st December, 1886, she appointed, subject to her life interest, to her two children, H. Beech and C. H. Greig. By another indenture of 18th December, 1894, she surrendered to H. Beech her life interest in the property appointed to H. Beech to the intent that such life interest might merge in his interest in remainder.

On the death of Mrs. Beech, on the 27th August, 1896, Estate Duty was claimed on the property in which Mrs. B. had surrendered her life interest. It was held (by Pollock, B., and Ridley, J.) the Crown was entitled to such duty. But the Court of Appeal (Smith, Chitty, and Collins, L. JJ.) reversed this decision, and held no property *passed*, and Mrs. Beech's life interest came to an end twenty months before her death.

The House of Lords (Lord Chancellor, Lords Watson, Ashbourne, Macnaghten, &c.) affirmed the decision of the Court of Appeal that no Estate Duty was payable. This decision is not affected by sect. 11 (1) of the Finance Act, 1900. It would, of course, be affected if the surrender is not to the entire exclusion of the deceased life tenant.

Such a surrender, to defeat the claim for Estate Duty, where the deceased dies on or after 30th April, 1909, must have taken place more than three years prior to the death, or before the 30th April, 1908, unless the remainderman is a public body or a charity (see sect. 59 (1) of the Finance (1909–10) Act, 1910), or unless the benefit is to a mortgagee or purchaser whose interest arose before 30th April, 1909. (See sect. 64 of that Act.)

Att.-Gen. v. *De Préville.*

When a tenant for life of settled property has voluntarily surrendered his life interest in favour of the remainderman and dies within twelve months of the surrender, no Estate Duty is payable (per Smith, Collins, and Williams, L. JJ., in the Court of Appeal, overruling Day and Lawrence, JJ., in the Q. B. D.).

In this case the Crown claimed alternatively Estate Duty on the value of the life interest, as at the *date of the surrender*, as a gift within a year of Mrs. De Préville's death. It was argued on behalf of the donee that sect. 7 (5) of the Finance Act, 1894, required that the value of the property for Estate Duty is to be its value at the deceased's death. At that date the value of the life interest was *nil*. This view was upheld by the Court of Appeal. Smith, L. J., said: "It is not disputed by the Crown that the life estate in the present case could never have been included in an account, for upon the death of the owner of this life estate, even if it had not been given to the son, it *ipso facto* came to an end, and there was, therefore, nothing to bring into an account."

Estate Duty would be payable on the property itself (not on the life interest) in a case similar to De Préville's if the life tenant dies after the 31st March, 1900. (See sect. 11 (1) of the Finance Act, 1900.)

The decision in *Att.-Gen.* v. *De Préville* will apply to a case where the tenant for life and the remainderman both convey or assign their respective interests (whether for value or not) to the same person before the death of the tenant for life, so that the property cannot be considered to pass on his death; but if

the tenant for life conveys his life interest to some person other than the reversioner, and the reversioner does not convey his interest to the assignee of the life interest, then the property is still regarded as passing within sects. 1 and 2 (1) (b).

The following case is an example of a gift to a class absolutely, but subject to the share of any member dying under twenty-one being divested:—

Att.-Gen. (*Ireland*) v. *Power and another.*

On the marriage of George Keogh Power certain lands were settled to the use (*inter alia*), in the events which happened, of all the children of the marriage in fee simple in equal shares, as tenants in common, and further in the event of the death under twenty-one years of age of any of the said children, without issue, to the use of the others of the said children and their respective heirs and assigns for ever, in equal shares as tenants in common.

The trustees were empowered in certain events to receive the rents of the said lands, and during the minority of any of the children to apply an annual sum towards his or her maintenance, and to invest the residue and accumulate the income thereof upon trust if the minor, being a male, should die under twenty-one for the person who should ultimately become indefeasibly entitled to the premises or the undivided share. The defendants were the only children of the marriage who took indefeasible estates in the lands.

On the death of Hubert Power (one of the children of the marriage), a minor, on the 5th August, 1898, a claim for Estate Duty was made in respect of his one-third of the property included in the settlement. The defendants contended that the interest of the deceased never became an interest in possession by reason of his death under age without issue, and that his one-third did not "pass" on his death.

The King's Bench Division (Ireland) (Lord Chief Baron Palles and Gibson, J.) held that no Estate Duty was payable, on the ground that Hubert Power had not an estate in possession, and that such sums as he might receive for maintenance were payable to him *eo nomine* under the express trust contained in the settlement for its payment to him, out of the interim income of an estate, the present income of which was not his, but the trustees'.

Palles, C. B., said the interest of the deceased was "fluctuating, uncertain, and incapable of being defined."

It follows that, in such a case, if (1) there is no provision at all, as to the income meantime, so that the deceased would have been entitled thereto, or (2) there is a trust to apply the whole income for the infant, Estate Duty would be payable on his death.

Goodwill of a business passing to surviving partners under the terms of the articles of partnership was held to fall within this sub-clause in *Att.-Gen.* v. *Boden.*

"But exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office or recipient of the benefits of a charity or as a corporation sole."

This prevents Estate Duty attaching on the death of any holder of an office of profit or charity, such as the occupant of any almshouse, a fellow of a university, a bishop, a trustee, &c. See

Att.-Gen. v. *Eyres and others.*

By a settlement dated 6th April, 1903, made between Caroline Mary Sybil Eyres and the persons therein called "the original trustees," it was declared that the trustees for the time being of the settlement should stand possessed of the trust fund upon trust to pay (*inter alia*) an annual sum of 200*l.* each to the trustees while acting in the trusts, by way of remuneration for their services, and in addition to any payments for professional services; subject thereto, the trustees were to hold the trust fund upon such trusts as the settlor should appoint, and, in default of appointment, to pay the income to the settlor during her life, with remainders over.

On the 2nd December, 1904, Sir Jacob Wilson was appointed a trustee in place of an original trustee who retired.

On the 15th February, 1905, Arthur Henry Sharp, an original trustee, died, and the defendant, Bolton James Alfred Monsell, on the 22nd May, 1905, was appointed by the settlor a trustee in his place.

On the 11th July, 1905, Sir Jacob Wilson died, and the defendant, Frederick Charles Marshall, on the 14th November, 1905, was appointed by the settlor a trustee in his place.

The Crown claimed Succession Duty on the annual sums of 200*l.*, to which B. J. A. Monsell and F. C. Marshall respectively succeeded on their appointments as trustees, and Estate Duty and Settlement Estate Duty on the principal value of the capital funds yielding the annual sums.

The case was heard on the 8th February, 1909, by Channell, J., who gave judgment for the defendants, dismissing the information, with costs. It was held, with regard to Succession Duty, that the annuities to the new trustees did not come to them by reason of the settlement upon the death of any person, but came to them upon their appointment and by reason of the vacancy in the trusteeship, and with regard to Estate Duty (Settlement Estate Duty, of course, followed) that the deceased trustees, as trustees of the settlement, held an office within the meaning of sect. 2 (1) (b) of the Finance Act, 1894.

(c) Property which would be required on the death of the deceased to be included in an account under sect. 38 of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

The relevant sub-sections of sect. 38 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), are as follows:—

38.—(1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2) The personal or moveable property to be included in an account shall be property of the following description, viz.:—

(a) Any property taken as a *donatio mortis causâ* made by any person dying on or after the first day of June, 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(b) Any property which a person dying on or after such day, having been absolutely entitled thereto, has voluntarily caused, or may voluntarily cause, to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(c) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or

any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

The relevant sub-sections of sect. 11 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), are as follows :—

11.—(1) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), is hereby amended, as follows :—

The description of property marked (a) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

The description of property marked (b) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person :

The description of property marked (c) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof.

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June, one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

Sect. 2 (1) (c) has been considerably amended by sect. 59 of the Finance (1909-10) Act, 1910.

Sect. 59 (1) makes gifts *inter vivos* within three years of the death, where the deceased dies on or after 30th April, 1909, liable to Estate Duty, but such extended period does not apply to—

(1) Gifts made or effected before the 30th April, 1908; nor to

(2) Gifts made or effected for public or charitable purposes.

Sect. 59 (2) excludes the following gifts from Estate Duty:—

(a) Gifts which are made in consideration of marriage;
(b) Gifts which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased and to have been reasonable, having regard to the amount of his income or to the circumstances;
(c) Gifts which, in the case of any donee, do not exceed in the aggregate 100*l.* in value or amount.

Sect. 59 (3) excludes from Estate Duty property taken under any disposition, surrender, assurance, or divesting act where the deceased had originally retained an interest, or had not been entirely excluded from any benefit provided the deceased had, more than three years prior to his death, surrendered such interest or been entirely excluded from any benefit.

(a) *Any property taken as a* donatio mortis causâ *made by any person dying, &c., &c.*

"*Donatio mortis causâ.*"—A *donatio mortis causâ* is a gift of personal estate made by a person in contemplation of death, only to take effect if the donor dies of his then sickness.

For examples of what can be made the subject of a *donatio mortis causâ*, see Williams' Law of Executors and Administrators, 10th ed., pp. 595—598.

"*Under a disposition made by any person so dying purporting to operate as an immediate gift* inter vivos, *whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been* bonâ fide *made twelve months before the death of the deceased.*"

Gifts, however effected, if made within twelve months of the deceased's death are liable to Estate Duty even if the gift is for public or charitable purposes, but where the deceased died on or after the 30th April, 1909, gifts within three years of the death are liable to Estate Duty subject to the exceptions mentioned in sect. 59 of the Finance (1909-10) Act, 1910.

Att.-Gen. v. *Booth* is a case under the Account Stamp Duty Act, but the principle is the same. The facts were as follows:—

A., who died on the 30th January, 1891, made several gifts amounting to several thousand pounds during the twelve months preceding his death to B., Account Stamp Duty was held to be payable thereon, and it is immaterial whether made in contemplation of death or not.

A gift is none the less a gift because the subject-matter thereof is settled on several persons by way of succession. See

Miles v. *The Queen.*

Within twelve months of his death, the settlor transferred certain shares and debentures into the joint names of each of his daughters and of trustees, and by letter the settlor declared, that upon the marriage or death of either daughter, her shares were to go in the same way as the property which she would have under his will, that was settled upon the daughter for life with remainder to his children.

Upon the settlor's death, Estate Duty was paid on the said shares and debentures, but a petition of right was afterwards filed for the return of such duty. The petitioners contended that the settlement was not "an immediate gift *inter vivos*, whether by way of transfer, declaration of trust, or otherwise."

It was held (by Wills and Grantham, JJ.) on the 12th April, 1897, that the Estate Duty was correctly paid.

Where a person voluntarily settled, within a year (now three years) of his death, funds in reversion at his death, on another for life remainders over, Estate Duty is leviable, on the death of the settlor, as on a gift under this sub-clause, on the value of the reversion, but with an option to defer payment of the duty under sect. 7 (6) of the Finance Act, 1894.

A gift in consideration of marriage falls within this section provided the deceased died prior to the 30th April, 1909. (Finance (1909–10) Act, 1910, s. 59 (2).) See

Att.-Gen. v. *Holden.*

On the treaty for the marriage of Wilfrid M. Holden to Beatrice Mary Byng Paget, the bride's father, Herbert B. Paget, agreed to settle 20,000*l.* on the intended wife, her husband, and issue of the marriage, on condition that Henry Holden, father of the intended husband, gave 10,000*l.* to his son.

The settlement of the 20,000*l.* was carried out by a marriage settlement dated 27th January, 1900. Henry Holden gave his son 10,000*l.* on the 2nd January, 1900, and died on the 1st February, 1900.

The Crown claimed Estate Duty at 6½ per cent. on the 10,000*l.*, which was aggregable with other property, passing on Henry Holden's death. The defendant resisted the claim, on the ground that the 10,000*l.* was not a gift, but came to him by

virtue of an obligation imposed on the deceased by a bargain between him and Mr. Paget.

Held (by Ridley, J.) that the claim for Estate Duty was well founded, under sect. 2 (1) (c) on the 10,000*l.* as a pure and simple gift, there being no consideration moving to Henry Holden, the deceased donor.

A somewhat similar point arose in the case of

Re William Cole Bayly (deceased), Att.-Gen. v. *Smyth and another.*

The deceased, by settlement, executed on the marriage of his son, conveyed certain real estate to trustees, to be held in trust for the son for life, or until bankruptcy, remainder for his wife and issue as therein declared, without reserving any interest for himself, and died within twelve months. Estate Duty and Settlement Estate Duty were claimed as payable under sect. 2 (1) (c) and sect. 5 of the Finance Act, 1894.

It was contended by the defendants that the assignment, having been made in consideration of the intended marriage, was not a "*gift*" within the meaning of the section.

The King's Bench Division (Ireland) (Palles, C. B., Johnson and Gibson, JJ.) on the 24th February, 1905, gave judgment in favour of the Crown.

Estate Duty would not be payable in these circumstances if the deceased died on or after the 30th April, 1909. See sect. 59 (2) of the Finance (1909–10) Act, 1910.

And in the case of *Att.-Gen.* v. *Milne* (p. 493), the House of Lords held that Settlement Estate Duty is not payable in the case of a gift within three years of the deceased's death.

In the case of a voluntary covenant to pay a sum during lifetime or within six months after death, if actually satisfied by payment within twelve months of death, such sum is liable to Estate Duty. See

Att.-Gen. v. *Viscount Cobham and others.*

By an indenture dated 1st June, 1892, Eliza Warrington voluntarily covenanted with trustees, that within three months after her death her executors should pay the sum of 5,000*l.*, free of all duties and deductions, to the trustees upon trust for a certain charity. Some eight years afterwards, with the object of giving the sum in her lifetime, Eliza Warrington executed another deed, dated the 3rd November, 1900, by which she

covenanted to pay the 5,000*l.* at once, and by this deed she, her executors, and estate were relieved from payment of the 5,000*l.* under the former deed.

The 5,000*l.* was paid over, and Eliza Warrington died within twelve months from the execution of the second deed, namely, on the 19th May, 1901. On her death the Crown claimed Estate Duty on the said 5,000*l.*

Held (by Channell, J., on the 7th March, 1904) that the payment of the 5,000*l.* was "an immediate gift *inter vivos*" within the meaning of sect. 38, sub-sect. 2 (a), of the Customs and Inland Revenue Act, 1881; that it was none the less a gift, because there was a release of the donor and her estate from the obligation under the prior deed, and therefore Estate Duty was payable under sect. 2 (1) (c) of the Finance Act, 1894.

If in this case the payment had not been made in the lifetime of the covenantor no deduction could be taken in the Inland Revenue affidavit of her estate in respect thereof against Estate Duty. (See *Lord Advocate* v. *Gunning's Trustees*, p. 146.)

This case seems to be in conflict with the decision of the Sheriff-Substitute (on the 31st March, 1898) in *Matheson* v. *Inland Revenue Commissioners*, where it was held that Estate Duty was not payable on a sum of 500*l.* promised to a charity more than a year before the deceased's death, but not actually paid over until within a year of such death.

H.M. Advocate v. *Heywood-Lonsdale's Trustees* (10,000*l. action*).

A father, in his daughter's marriage contract, dated 28th July, 1899, bound himself to pay her during their joint lives, or until payment of a capital sum, as after mentioned, 300*l.* per annum pin money. He further bound himself and his heirs, &c., to pay to the trustees under the marriage contract, at the first term after his death, the sum of 15,000*l.*, free of all death duties, but reserving power to prepay the sum in whole or in part during his life, in which event the 300*l.* pin money should cease from the date of the payment of the 15,000*l.*, or of not less than 10,000*l.* of it. These provisions the daughter accepted as in full discharge of all claims in respect of "legitim" or otherwise by her father's death, and as in lieu of all provisions by him in her favour, under his own marriage contract, by which he had covenanted to provide a sum of 12,000*l.* for his younger children, of whom she was one.

On 15th September, 1900, the father in exercise of his power paid to the trustees 10,000*l.* of the 15,000*l.*, thereby terminating his obligation to pay the 300*l.* per annum pin money. He died on the 15th October, 1900.

In these circumstances, payment of Estate Duty and Settlement Estate Duty was claimed by the Crown on the father's death on the 10,000*l.* under sect. 2 (1) (c) of the Finance Act, 1894. The defenders maintained that the payment of the 10,000*l.* was a payment in fulfilment of an onerous obligation undertaken by the father in his daughter's marriage contract, which was made more than twelve months before his death, and therefore sect. 2 (1) (c) did not apply. In any case, they contended that sect. 3 applied in respect of (1) the cesser of the obligation to pay the 300*l.* per annum pin money, and (2) the discharge by the daughter of "legitim," &c., and of her right and interest in the provision as to the 12,000*l.* contained in her father's own marriage contract.

On the 3rd January, 1905, the Lord Ordinary in Exchequer Causes in Scotland gave judgment in favour of the Crown, and, on appeal, this judgment was upheld by the First Division.

This case is overruled as to Settlement Estate Duty by *Att.-Gen.* v. *Milne.*

Inland Revenue v. *Heywood-Lonsdale's Trustees* (5,000*l. action*).

Lord Hamilton of Dalzell, being heir of entail in possession of the entailed estates of Dalzell and Jerviston, on the 4th January, 1900, with the necessary statutory consents, petitioned the Court for authority to charge the estates with sums amounting to 122,000*l.*, by granting bonds and dispositions in security over them. On the 20th February, 1900, the Court granted authority as craved, and thereafter bonds for sums amounting in all to 45,000*l.*, on behalf of his younger children, were put on the lands by commissioners for Lord Hamilton. These bonds included one dated 4th and 6th and recorded 23rd July, 1900, in favour of the marriage contract trustees of his daughter, Mrs. Heywood-Lonsdale, for the sum of 5,000*l.* Lord Hamilton having died on the 15th October, 1900, payment of Estate Duty and Settlement Estate Duty was claimed by the Crown on the 5,000*l.* under sect. 2 (1) (c).

This bond for 5,000*l.* was in addition to and distinct from the original provision of 15,000*l.* already made by Lord Hamilton for Mrs. Heywood-Lonsdale under her marriage contract (see 10,000*l.* action above). The statutory consents to the petition

to charge were given by Lord Hamilton's sons, the three next heirs. Under a provision in the entail, in the event of their consents having been withheld, Lord Hamilton could not have them valued and dispensed with. The defenders maintained that though in point of form the bond for 5,000*l.* was the act of Lord Hamilton alone, yet in substance and reality it was granted by him and the three next heirs acting together under authority of the Court.

On the 9th March, 1905, the Lord Ordinary in Exchequer Causes in Scotland gave judgment in favour of the Crown.

This case was overruled as to Settlement Estate Duty by *Att.-Gen.* v. *Milne.*

The value of the gift for the purposes of Estate Duty is the value at the date of the death. (Sect. 7 (5), Finance Act, 1894, and *Att.-Gen.* v. *De Préville.*)

It is conceded, however, that the value of a gift (within three years of the deceased's death) of a policy of insurance, on the life of the deceased or another, is the surrender or saleable value at the date of the gift.

The payment of a sum of money may be none the less a gift for the purposes of sect. 2 (1) (c) though paid in pursuance of a moral obligation. See

Att.-Gen. v. *Chamberlain and others.*

Sir Neville B. Chamberlain by his will, dated 13th December, 1901, devised and bequeathed all his estate and effects to his brother, Sir Crawford T. Chamberlain, absolutely, or if he should predecease him, then to his executors on such trusts as he should at any time make known to them, and appointed him and two others executors and trustees of his will.

On the 11th January, 1902, Sir N. B. Chamberlain signed a letter to his brother (not admitted to probate) headed "Instructions to my Executors," *inter alia*, stating, "I have left all my estate to you, in the fullest reliance that you will, as far as possible, and to the uttermost, carry out any wish that I may express in writing now or later. I do not wish to fetter your discretion in any way."

Then followed certain directions as to disposal of certain property and amounts to be paid to certain persons. A copy of this document was sent to Sir Crawford T. Chamberlain, who wrote, "Every wish expressed by my brother shall be carried out to the very fullest extent," and the effect of this letter was communicated to Sir Neville, who died on the 18th February, 1902,

and his will was proved and Estate Duty and Legacy Duty were paid on his estate.

Sir Crawford T. Chamberlain took possession, as beneficial owner, of the residuary estate of Sir Neville B. Chamberlain, and he made, on the 13th May, 1902 (within twelve months next before his death), a settlement of 5,000*l.* on each of his four nephews and a niece. He also gave and paid other sums to various persons in accordance with the instructions in the letter of the 11th January, 1902.

Sir Crawford T. Chamberlain died on the 13th December, 1902.

Held (by Channell, J.) that no trust was created by said letter, and that the settlement of 5,000*l.* so made was a gift made by Sir Crawford within twelve months of his death, and so Estate Duty and Settlement Estate Duty were payable in respect thereof.

This section would include a gift of a reversion even if made to the tenant for life, on whose death the same would fall into possession.

Example:—

A. settled 1,000*l.* on B. for life (living) and then to C. absolutely. C., by deed of gift of the 1st January, 1906, assigned his reversion to B., and died in 1906. Estate Duty is payable on C.'s death on the value of such reversion.

It is thought that where the deceased entered into a transaction within three years of his death which was partly a gift and partly a sale, such as a purported sale for an obviously inadequate consideration, Estate Duty would be payable on the value of the gift notwithstanding the case of *In re Weir and Pitts' Contract.*

In re Weir and Pitts' Contract.

A father conveyed two houses to his son in consideration of 400*l.*, this sum being allocated equally to the two houses. Shortly afterwards the son sold one of the houses for 530*l.* and the purchaser raised the objection that, the house having been the subject of a voluntary disposition by the father, it would be liable to Estate Duty if the father died within three years of the conveyance to his son.

Held (by Warrington, J., on the 17th May, 1911) that this was not a voluntary disposition and that Estate Duty would not be payable.

The Crown was not represented in this case, and it will be observed that the word "voluntary" is excluded from sect. 2 (1) (c).

Phillimore, J., in *Att.-Gen.* v. *Johnson* stated that there might be "an arrangement under which property is consciously purchased for considerably less than its value, there being a gift to the purchaser of the balance over the true commercial value of the property," and although his judgment in that case was reversed on appeal (the transaction having been held to be a gift and not a sale), this does not appear to affect the soundness of his statement as quoted.

Twelve Months.—"Months" means calendar months: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 34, and *Freeman* v. *Read*, 4 B. & S. 174. The period is three years where the death is on or after 30th April, 1909. (Finance (1909–10) Act, 1910, s. 59.)

"*Property taken under any gift, whenever made, of which property* bonâ fide *possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.*"

This clause is aimed at gifts whenever made, where the donor retains some benefit by contract or otherwise, but not necessarily issuing out of the subject-matter of the gift.

If the benefit is entirely given up or surrendered to the donee of the gift more than three years prior to the death of the deceased, Estate Duty is no longer payable. (Sect. 59 (3), Finance (1909–10) Act, 1910.)

The following are examples of cases falling within the sections of the Customs and Inland Revenue Acts, 1881 and 1889, incorporated into this section:—

Crossman v. *The Queen.*

The facts are as follows:—

By a deed, dated 12th July, 1883, Robert Crossman appointed (in execution of a power in certain partnership articles) shares in the partnership to his sons, J. H. Crossman and A. Crossman, as from 1st October, 1883, or death of Robert Crossman, which should first happen, on condition said sons executed a deed (as they did the same day) covenanting to pay R. Crossman, as from 1st October, 1883, interest at 4 per cent. during his life on the value of the appointed shares. There were also covenants

by the sons to pay certain other annuities. Robert Crossman died 19th July, 1889. It was held that the transfer was a voluntary settlement within the above clause, and that a life interest in the property had been reserved to the settlor.

Lord Advocate v. *Wilson.*

One Wilson had transferred to his sons, who formed a partnership, the whole stock-in-trade and goodwill of his business. The sons undertook to pay an annuity equal to 5 per cent. on the value of the stock (but not secured on the property transferred) to their father for life, and then to their mother for life. Held, following *Crossman* v. *The Queen*, that Account Stamp Duty was payable on the value of the business.

Att.-Gen. v. *Worrall.*

A. was possessed of a sum of 23,925*l.*, secured by mortgage of land, and he had obtained a decree for foreclosure which had not been made absolute. A.'s son B., by an indenture in 1886, purchased the equity of redemption from the mortgagors for 525*l.*, and by the same indenture A. released B. from the mortgage debt in consideration of B. covenanting to pay A. 735*l.* per annum during remainder of A.'s life. The Court of Appeal (Lord Esher and Lopes and Smith, L. JJ.) held that was a *gift* within the meaning of sect. 11 of the Customs and Inland Revenue Act, 1889, of property of which "*bonâ fide* possession and enjoyment had not been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise." Therefore the sum of 23,925*l.* was liable to Account Stamp Duty on A.'s death.

The following cases were decided under sect. 2 (1) (c):—

Att.-Gen. v. *Earl Grey.*

By an indenture dated 19th October, 1885, the third Earl Grey conveyed certain manors and hereditaments, and all other his real estate, also all furniture in and about the mansion house at Howick, and all other his personal estate (except money in bank, private papers, and his wardrobe and ornaments in his personal use) to his nephew, Albert Hy. G. Grey, in fee and absolutely respectively, subject to the following reservations and conditions:—

1. The said Earl to have the right to occupy and enjoy the mansion house and furniture for his life.

2. The said nephew to pay all annuities then charged on the said real estate and all mortgages.

3. The said nephew also to pay 4,000*l.* per annum to the third Earl for life, charged on all the premises except the mansion house.

4. The said nephew to keep in repair, maintain, and insure said mansion house.

5. To supply the Earl with farm and garden produce for consumption of his household free of cost.

6. To pay funeral and testamentary expenses of the third Earl, stamp and other duties, and also all debts of the third Earl to the full exhaustion of all the property.

7. In the event of the nephew predeceasing the third Earl, or of breach of any of the said conditions, the Earl to have a power of revocation.

There were certain other restrictions which do not materially affect the conditions above. By indenture of 26th September, 1894, in consideration of 5,000*l.* paid to the Earl by the nephew, the Earl released the nephew from said rent charge and from certain other of the conditions, including No. 7, but not from Nos. 1, 2, 4, 5, and 6.

The Earl died 9th October, 1894. The average annual net income of the property comprised in said indenture of 19th October 1885, very considerably exceeded the said rent charge. The Commissioners of Inland Revenue claimed Estate Duty on all the property comprised in the indenture of 19th October, 1885, as property passing on the death of the third Earl within the meaning of sects. 1 and 2 (1) (c) of the Finance Act, 1894.

The Court (Grantham and Channell, JJ.) held such claim was well founded.

The Court of Appeal (Smith, Rigby, and Williams, L. JJ.) affirmed this decision.

Smith and Rigby, L. JJ., on the ground that the case fell within sect. 38 (2) (a) of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889.

Williams, L. J., seems to have thought the covenant to pay the donor's debts was a sufficient reservation within sect. 38, since by this means the donor could have exhausted the whole of the property.

The House of Lords affirmed the decision of the Court of Appeal, and the Lord Chancellor, in delivering judgment, said :

"It is burning daylight to say that it is not within the express language of the statute."

Att.-Gen. v. *Johnson.*

C. T. M. Burton, in 1889, in pursuance of an arrangement with the London Missionary Society, paid the sum of 500*l.* to the society, subject to an arrangement to pay him an annuity of 25*l.* during his life, and after his death to his wife, Martha Burton, during her life. The actuarial value of such an annuity was 210*l.*

C. T. M. Burton died on the 12th March, 1895, and Martha Burton died on the 5th May, 1900. The Crown claimed Estate Duty on the 500*l.* on the death of C. T. M. B., and Succession Duty at 11½ per cent. on the death of M. B., but it was admitted at the hearing this would be at the rate of 10 per cent. if payable.

Phillimore, J., held: (1) that although Estate Duty was payable under sect. 2 (1) (c) of the Finance Act, 1894, so much of the amount as was purchase-money could be deducted under sect. 3, sub-sect. 2, and so Estate Duty was only payable on 290*l.*; (2) that there was a *bonâ fide* sale, and so no Succession Duty was payable. The Court of Appeal (Williams, Stirling, and Mathew, L. JJ.), however, held that the transaction came within sect. 2 (1) (c) of the Finance Act, and was not a *bonâ fide* sale, and therefore Estate Duty was payable on the whole of the 500*l.*, without any deduction of 210*l.*, and Succession Duty was also payable on the cesser of the 25*l.* annuity under sect. 7 of the Succession Duty Act, 1853.

Succession Duty in such a case is assessable on the value of the annuity as in perpetuity, viz., for ninety-five years certain, or twenty-four and two-fifths years' purchase (see the Tables to the Succession Duty Act, 1853, and Rules at the end thereof), but such value is not to exceed the value of the property given after deducting the Estate Duty payable.

Example:—

A. (when aged sixty), in 1900, gave 1,000*l.* to Blank Hospital in consideration of the said hospital paying A. 40*l.* per annum for her life. An annuity of 40*l.* for a life aged sixty = 388*l.* 16*s.* 4*d.* (Table I. to the Succession Duty Act, 1853.) A. died in 1912, leaving free estate 9,500*l.* net. Estate Duty is payable by the hospital at 5 per cent. = 50*l.* Succession Duty is payable on the cesser of the 40*l.* annuity, viz., on

twenty-four and two-fifths years' purchase of 40*l.* = 976*l.*; but 1,000*l.* less 50*l.* = 950*l.* Therefore Succession Duty is payable at 10 per cent. on 950*l.* The duty is payable in one sum, and not by instalments, if the donee is a charity. If the donee is not a charity, the Succession Duty may apparently be paid by four annual instalments.

In these cases, if the interest of the deceased had been surrendered or released more than a year (now three years) before his death, Estate Duty would not be payable.

In cases of gifts of furniture where the donor resides with the donee and so has the use of the same to his death, and of a gift of a house where donor resides with donee and pays no rent, Estate Duty is not payable on the donor's death under this sect. 2 (1) (c), unless the donor can enforce the right to use the furniture or reside in the house. (See *Lord Advocate* v. *McTaggart Stewart*, Parts 2 and 3 of that case, p. 26; and *Att.-Gen.* v. *Seccombe*, p. 51.)

The interest in the property given may be "retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise," notwithstanding that the donor does not give the reversion expectant on the determination of such interest.

For example:—

A. (who died in 1903), by deed of gift of 1900, conveyed Blackacre to his son B. for life; the deed contained no other limitation, and there was, therefore, a resulting trust of the remainder in fee to A. On A.'s death Estate Duty is not payable on Blackacre, because A. did not reserve to himself a benefit by contract or otherwise, merely because he retained the reversion. Of course on B.'s death Estate Duty will be payable on Blackacre as part of A.'s estate.

In re Cochrane.

The facts are as follows:—

By deed, dated 4th September, 1902, the settlor (the deceased) assigned to trustees a sum of 15,000*l.* secured on mortgage upon trust to pay out of the income a sum of 575*l.* per annum to his daughter for life, and after her death as to the said sum of 15,000*l.* in trust for her children, with power to the daughter to appoint 300*l.* a year to her husband for his life. If there should be no

child who being a son should attain twenty-one, or a daughter attain that age or marry, the trustees were to hold the trust funds after the death of the said daughter (but subject to the husband's annuity) in trust for the settlor absolutely. The trustees during the life of the daughter were to hold the balance of the income after payment of the 575*l.* annuity (or the annuity to the husband) upon trust for the settlor absolutely. The mortgage upon which the 15,000*l.* was invested produced 675*l.* per annum. The settlor died on the 11th September, 1904.

The Crown claimed and was paid Estate Duty and Settlement Estate Duty on the whole of the 15,000*l.* under sects. 2 (1) (c) and 5 (1). This was a petition under sect. 10 of the Finance Act, 1894, for the return of these duties.

The King's Bench Division, Ireland (Lord Chief Baron Palles, and Johnson and Kenny, JJ.), on 29th June, 1905, gave judgment for the petitioners, holding that neither the trust for the settlor of the surplus income after the payment of the daughter's annuity, nor the ultimate contingent trust for the settlor of the corpus of the fund, rendered the gift one "of which *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise," within the meaning of sect. 38 (2) (a) of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, and sect. 2 (1) (c) of the Finance Act, and that neither Estate Duty nor Settlement Estate Duty was payable on such part of the 15,000*l.* as was settled on the daughter, her husband and issue. The Court of Appeal in Ireland (Walker, L. C., and Fitzgibbon and Holmes, L. JJ.), on 26th February, 1906, affirmed the decision of the Court below.

Re William Clarke (deceased).

The facts are as follows:—

In 1895 the deceased was owner of a business, and took his two sons into partnership. The sons brought no money in, but were bound to devote their whole time to the business. They were each to receive one-fourth of the profits, and on the death of the father they were to become jointly entitled to the partnership assets. Certain insurance premiums amounting to 205*l.* 12*s.* payable on policies on the life of the father, and all his household expenses (700*l.* per annum), were to be paid

yearly out of the partnership assets, and he was empowered to charge the business with 6,000*l.*, which was subsequently increased to 8,000*l.*

By a supplemental deed, dated 18th October, 1900, the father assigned to his said sons all his share in the business, and the charge of 8,000*l.* was increased to 12,000*l.* The father died on 10th December, 1904, and Estate Duty was paid on his real and personal estate, including the said 12,000*l.* The Commissioners of Inland Revenue claimed Estate Duty in addition on the entire amount of the partnership assets, less the 12,000*l.* on which duty had been paid.

The duty was paid, and the executors appealed against the assessment. Judgment was given by the King's Bench, Ireland (Lord Chief Baron Palles and Johnson and Kenny, JJ.), on 3rd February, 1906, in favour of the Crown, on the ground that a benefit had been reserved by the deeds to the donor, that the case came within sect. 38 (2) (a) of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, and incorporated in sect. 2 (1) (c) of the Finance Act, and that none of the deeds had the effect of making the transaction a purchase for money or money's worth within sect. 3 (1) of the Finance Act, 1894, and that therefore Estate Duty was payable.

Where the deceased settled property in trust for his children, as he should by deed or will appoint, and *until such appointment* upon *trust for himself for life*, with remainder equally to his children, and, more than three years prior to his death, he appointed to his children without any reservation to himself, there is no claim for Estate Duty on his death, the gift to the children is complete and without reservation as from the appointment.

Att.-Gen. v. *Waghorn.*

General Dwyer transferred various securities from time to time to his daughter, the defendant, through Messrs. Coutts & Co. At her father's request the defendant signed authorities to Messrs. Coutts & Co. to pay dividends to her father's account.

On the 4th November, 1903, the day before her marriage, the defendant by letter cancelled the authorities as from the 1st February, 1904, and directed the bankers to place the dividends to an account in her own name.

On the 31st March, 1906, General Dwyer died, and Estate

Duty was claimed upon the principal value of the securities under sect. 2 (1) (c) of the Finance Act, 1894, on the ground that *bonâ fide* possession and enjoyment were not assumed immediately by the defendant, nor was there an entire exclusion of any benefit to the donor, inasmuch as he took the dividends.

The case was heard on the 5th February, 1909, by Channell, J.

The defendant gave evidence to the effect that her father had informed her that the investments and dividends were to be hers, and that her father invested the dividends from time to time for her own benefit.

On this evidence the Attorney-General asked his Lordship to enter judgment for the defendant with costs.

It will be observed that the case leaves undecided what would have been the effect of the transactions if the father had received the dividends for his own use and benefit, and had not re-invested them for his daughter.

It is considered, however, since the case of *Att.-Gen.* v. *Seccombe*, that in order to attract a claim for Estate Duty on gifts with a reservation or not to the entire exclusion of the deceased donor from all benefits, that the reservation to the deceased, or the benefit retained, must be such that it can be legally enforced, and not due to the goodwill or generosity of the donee only.

Att.-Gen. v. *Seccombe.*

By a deed of gift dated 26th May, 1897, John Hocken Seccombe, in consideration of natural love and affection, granted to the defendant, his great-nephew, certain lands and house, being a farm, together with the stock, furniture and chattels thereon, which constituted the whole of the property of the donor, except an annuity of 15*l.* charged on land which belonged to the defendant. At the time the deed was executed the donor was eighty-two years of age, and the active management of the farm had been taken over by the defendant. After the execution of the deed the donor continued to reside on the farm, and was maintained by the defendant up to the time of the donor's death on the 30th January, 1906, the defendant retaining the annuity which covered the cost of the donor's maintenance. There was no contract that, in consideration of the gift, the donor should be allowed to reside in the house and be maintained by the defendant, nor was there any understanding

to that effect in the sense of an arrangement or honourable understanding.

The Crown claimed Estate Duty on the value of the property comprised in the deed of the 26th May, 1897, on the death of the donor in 1906.

It was held, on 6th April, 1911 (Hamilton, J.), that there was an "entire exclusion of the donor, or of any benefit to him by contract or otherwise," from the possession and enjoyment of the property within the meaning of sect. 11 of the Customs and Inland Revenue Act, 1889, and that therefore Estate Duty was not payable under sect. 2 (1) (c) of the Finance Act, 1894.

The words "or otherwise" in sect. 11 (1) of the Customs and Inland Revenue Act, 1889, must be read *ejusdem generis* with the word "contract," and refer to an enforceable arrangement.

Hamilton, J., said [1911] 2 K. B. 701: "The word 'benefit' is not in my opinion confined to a benefit conferred by the deed of gift or to a benefit issuing out of the property conveyed. A benefit issuing out of some other property or a benefit given by some separate and independent contract will come within the section. . . . I think that the words 'by contract or otherwise' are aimed at any contract between the parties to the deed of gift or any contract with third parties having the effect of conferring a benefit on the donor, and also any transaction enforceable at law or in equity which though not in the form of a contract may confer a benefit such as a lien."

(b) *Any property which a person dying on or after such day having been absolutely entitled thereto, has caused or may cause to be* (1) *transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.*

(1) *This expression is to include also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person.* (*See sect.* 11 *of the* 52 *Vict. c.* 7.)

Joint Investments and Joint Tenancy.

Where the deceased has property standing in the joint names of himself and another, it would appear at first sight an easy matter to determine what claim for Estate Duty arises on his death, but considerable difficulty is experienced in actual practice in ascertaining what the actual rights and intentions of

the parties were, for almost all the presumptions of law can be rebutted by evidence to the contrary.

Under sect. 38 (2) (b) of the Customs and Inland Revenue Act, 1881, as incorporated into sect. 2 (1) (c) of the Finance Act, 1894, where the deceased provided the *whole* of the property transferred into the joint names of himself and another so that *some part* thereof passes or accrues by survivorship to such other person, it is conceivable that Estate Duty is payable on the whole, but it is not the practice to press this view to the uttermost, and if it can be shown that such other person was entitled in law and equity to receive a proportion of the income during the life of the deceased the charge of Estate Duty is limited to the proportion of which the deceased was entitled to receive the income.

For example:—

1. A. purchases 5,000*l.* Consols in the joint names of himself and his son B., and it is shown that B. is entitled in law to a moiety of the income during their joint lives. On A.'s death Estate Duty is payable on a moiety of the Consols.
2. A. provides 1,000*l.* and B. 500*l.*, and they purchase a messuage therewith, which is conveyed to them as joint tenants. The conveyance to them would probably recite the purchase-money was paid by them out of moneys belonging to them on a joint account. It is proved that by an enforceable agreement the rent was divisible in equal shares during their joint lives. On A.'s death Estate Duty is payable on a moiety of the value of the messuage.

The difficulties arise also in considering whether the joint investment can be considered "settled" property so as to exempt it from aggregation with the deceased's free estate under the provisions of sect. 16 of the Finance Act, 1894.

Joint Investments.—These can conveniently be divided according to the relationship of the deceased to the joint investor.

(1) *Husband and wife.*—If a husband invests money in the joint names of himself and his wife, the presumption of law is that the husband intends to enjoy the income during their joint lives, and that the wife shall be entitled to the capital on his death.

Malins, V.-C., in his judgment *In re Eykyn's Trusts*, 6 Ch. D.

115, said: "If a husband invests money, stock, or otherwise in the names of himself and his wife, then also it is an advancement for the benefit of the wife absolutely if *she survives her husband*, but if he survives her then it reverts to him as joint tenant with his wife."

Under these circumstances the investment is "property settled otherwise than by the will of the deceased," and does not fall to be aggregated with the husband's free estate under 1,000*l.* (See sect. 16, Finance Act, 1894.)

This presumption of law may be rebutted, and the question of whether the property is "settled" or not will depend on the facts.

If a husband and wife each provide an equal sum, and purchase stock in their joint names, and receive the dividends equally, on the death of either Estate Duty will be payable on a moiety. Having regard to the grave doubts whether the property is "settled" or not, it is considered that if it is to the advantage of the taxpayer, such property may be treated as "settled," and therefore excluded from aggregation with the deceased's free estate if under 1,000*l.* net.

But of course the parties in this case may have intended to create a settlement, which intention they may have embodied in a written memorandum, the moiety should then be clearly treated as "settled property."

(2) *Father and child.*—If a person invests money in the joint names of himself and his child, or other person to whom he stands *in loco parentis*, there is a presumption in law that he intends to provide for the child or other person on his death. (See *Standing* v. *Bowring*, 31 Ch. D. 282.) This presumption may be rebutted, but if it is not, the joint investment should be treated for Estate Duty purposes on the same lines as (1).

(3) *If no relationship exists.*—The presumption of law is, that there is a resulting trust in favour of the person making the joint investment, and if this presumption is not rebutted the joint investment should be treated as the free unsettled estate of the deceased if he was the person making the joint investment. On the other hand, if, for example, strangers in blood invest 1,000*l.* Consols in their joint names (contributing the purchase-money in equal shares), Estate Duty is payable on half on the death of either, and the investment may be treated as "settled" property, if to the advantage of the taxpayer to do so. The moiety can then be excluded from aggregation with the deceased's estate if that is under 1,000*l.* net.

Joint tenancy.—If a true joint tenancy is shown to exist as to any property of which the deceased was joint owner with another or others, Estate Duty is payable on the deceased's severable share, and this share may be treated as "settled property."

If a husband purchases real estate and has the same conveyed to himself and wife as joint tenants, the presumption of law is that there is an immediate advancement of a moiety to the wife. (*Dunbar* v. *Dunbar.*)

But no such presumption arises when a wife buys property in the joint names of herself and husband.

In the case of

Att.-Gen. v. *Ellis and others.*

A husband and wife purchased railway stocks, &c., in their joint names, the purchase-money being contributed in equal shares, and such purchases were made on the express agreement that the survivor should be entitled to the whole. Held (by Lord Russell, C. J., and Charles, J.) Account Stamp Duty was payable on the death of the husband, on so much of the stocks as was purchased with his money. The word "voluntarily" in sect. 38 meant "freely," "without compulsion," and "not under any obligation," and is not used in the sense of "without consideration."

In *Att.-Gen.* v. *Smyth*, "voluntarily" was held to mean "without consideration." And Palles, C. B., in that case, said that the decision of the House of Lords in *Savoy Overseers* v. *Art Union* deprived *Att.-Gen.* v. *Ellis* of all authority.

The meaning of "*voluntarily*" is for Estate Duty purposes immaterial, since all reference thereto is expressly excluded in sect. 2 (1) (c) of the Finance Act, 1894.

(*c*) *Any property passing under any past or future settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.*

The expression "settlement" is to include any trust, whether expressed in writing or otherwise, and, if contained in a deed or other instrument effecting the settlement, whether such deed or

other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property" included the proceeds of sale thereof.

This sub-clause brings within the operation of the Act all settlements by the "*deceased*," whereby he reserves a life interest, a general power of appointment, or a power of revocation. Sect. 59 of the Finance (1909–10) Act, 1910, does not exclude any property from this sub-clause.

The following cases, though decided as to the Account Stamp Duty, apply equally to Estate Duty:—

Att.-Gen. v. *Gosling.*

By an indenture of 5th July, 1877, being articles of partnership, R. Gosling was empowered by deed or will to dispose of his share in the business funds and premises to any of his sons or to certain other persons. R. Gosling died on the 20th July, 1889, having exercised this power by will in favour of his eldest son.

Held by the Divisional Court (Hawkins and Wills, JJ.) that the indenture of 1877 constituted a voluntary settlement, whereby a life interest was reserved to the settlor, and under which a share in the partnership passed to R. G.'s eldest son, and that Account Stamp Duty was payable in respect thereof.

Att.-Gen. v. *Heywood.*

By a settlement of 15th June, 1878, E. P. assigned a fund to trustees upon trust (*inter alia*) to pay the income thereof, in their discretion and without anticipation, for the benefit, maintenance, and personal support of the settlor, his wife and children, or at the discretion of the trustees for the benefit, maintenance, and personal support of such one or more, to the exclusion of the others or other, as the trustees should think proper, and, on the settlor's death, to hold the fund for his widow and children. The settlor died on the 9th June, 1885—having, as a matter of fact, received the income to his death. Held by the Divisional Court (Stephens and Wills, JJ.) that, "an interest" for life having been reserved to the settlor by his voluntary settlement, the fund was liable to Account Stamp Duty under sect. 38 (2) (c) of the Customs and Inland Revenue Act, 1881.

Att.-Gen. v. *Chapman.*

By a marriage settlement of 30th August, 1843, H. F. transferred property to trustees, on trust to pay the income to herself for life, and on her death to her husband for life (he predeceased her), and on death of the survivor, in default of children (which happened), for such persons as H. F. should appoint. By deed, dated 30th August, 1848, H. F. appointed to her niece, and died in 1888. It was held by the Divisional Court (Denman and Wills, JJ.) that as the property "*passed*" under the deed of 1843, by which a life interest was reserved to the settlor, sect. 38 (2) (c) of 44 Vict. c. 12 applied, and Account Stamp Duty was payable. It was observed that the expression "*passed under*" is not a phrase of art, but a phrase of a comprehensive nature.

Att.-Gen. v. *Jacobs-Smith.*

Mrs. Anne Smith, a widow, was entitled, at the time of her second marriage, to the goodwill of several businesses and to the real estate used and occupied therewith of the value of 195,000*l.* She had eight children by a former marriage. In her marriage settlement of 18th March, 1890, on her second marriage, the following arrangements were made. Mrs. Anne Smith to sell her said business to a limited company for 19,500 10*l.* shares, said shares to be dealt with as follows:—

1,000	shares	to be given	to each of her four adult sons.
1,000	„	„	held in trust for each of two infant sons.
600	„	„	settled on her daughter, Mrs. Wood.
600	„	„	„ „ „ Mrs. Hammond.

The balance 12,300 shares were to be held in trust to provide an annuity of 1,000*l.* for her second husband Jacobs-Smith for life, and residue to Mrs. Smith for life, remainder as to 25,000*l.* as she should absolutely by will appoint, and subject thereto all to the eight children of her former marriage or their issue.

Mrs. Jacobs-Smith died 2nd August, 1890. The Crown claimed Account Stamp Duty was payable on the 4,000 shares by the four sons, and on the whole of the 15,500 shares, less 25,000*l.*, which Mrs. Jacobs-Smith appointed by her will, and which therefore paid Probate Duty, and less the sum invested to provide the 1,000*l.* annuity to the husband for life, by the trustees of the settlement.

The Court of Appeal (Lindley, Lopes, and Kay, L. JJ.) held (reversing Wright and Collins, J.J.) the children of the former

marriage were volunteers, and therefore Account Duty was payable on the 4,000 shares and the 3,200 shares under clause (a) of sub-sect. 2, sect. 38, of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, and on the 12,300 shares (less said 25,000*l.* and the sum to provide said annuity) under clause (c) of sub-sect. 2, sect. 38, of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 above of the 1889 Act.

Att.-Gen. v. *Wendt.*

The widow of a deceased partner became entitled on his death to an annuity of 700*l.* under the terms of the partnership deed. Lord Russell, C. J., held this annuity was "*property*" which "*passed*" under a voluntary settlement to the widow within the meaning of sect. 38 above.

Att.-Gen. v. *Rathdonnell.*

By a marriage settlement the wife settled 5,000*l.* upon trust after the death of herself and husband, and in events which happened, to apply the same in paying off incumbrances on certain lands brought into settlement by her husband and his father, and of which her husband was then tenant for life in remainder, and out of which a jointure was secured to the wife. The wife was also given a life interest in 4,000*l.* settled by her father-in-law. The wife survived the husband, and at the date of her death a stranger to her in blood (but a grandson of the father-in-law) had succeeded to the lands.

It was held (by Palles, C. B., Andrews and Murphy, JJ.) that the 5,000*l.* passed to a volunteer, and Account Duty was payable thereon.

Goodwill of a business passing to surviving partners under the partnership articles was held not to fall within the terms of this sub-clause in *Att.-Gen.* v. *Boden.*

(d) *Any money received under a policy of assurance effected by any person* dying on or after the 1st day of June, 1889, *on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.*

This sub-clause operates to cover such cases as policies effected under the Married Women's Property Acts, 1870 and

1882, and also nomination policies under the Friendly Societies Acts.

In order to bring a case within this sub-clause, it is necessary that the donor should pay some premiums after the assignment; whether it is necessary that he should continue to pay them to his death seems somewhat doubtful, but it is thought not, otherwise the words "or a part of such money," &c., would be meaningless.

Example:—

A. effected in 1884 a policy on his own life under the Married Women's Property Act, 1882, s. 11, for the benefit of his wife B., and paid the premiums for twenty years, when he ceased to pay them. B. then paid the premiums for five years. A. died in 1909, when twenty-five premiums had been paid. It is thought Estate Duty is payable on four-fifths of the policy moneys, being the proportion attributable to the premiums paid by A.

In the following case, it will be observed, the deceased paid no premiums AFTER he had assigned the policy to his daughter.

Lord Advocate v. *Robertson.*

The facts were as follows:—

James Fleming (who died 18th February, 1890) effected on the 21st February, 1840, a policy on his life for 300*l.*, with the Scottish Equitable Life Assurance Society, and kept up the premiums as they fell due until the 26th September, 1883, he then gratuitously assigned it to his daughter, Mrs. Robertson. After that date, she paid all the premiums to his death. The Crown claimed Account Stamp Duty under the above clause, or in the alternative Succession Duty under sect. 17 of the Succession Duty Act, 1853. Both claims were rejected by the House of Lords (Halsbury, L. C., Lords Herschell, Macnaghten, Morris, and Shand). Lord Halsbury, L. C., said he could not state it more plainly than Lord Adam had done in his judgment in the Court below (First Division of the Court of Session in Scotland), who said, "I confess I have never been able to understand, in this case, how a policy of insurance could be kept up for the benefit of a donee, when no donee was in existence."

If a fully paid-up policy is gratuitously assigned by the assured, Estate Duty is not payable on the death of the assured

under this clause; it is considered the beneficial interest passed to the donee at the date of the assignment and that no property passed to him on a death, moreover there is no keeping up of the policy by the assured for the benefit of a donee.

It is convenient to consider under this sub-clause the claims for Estate Duty on policies of insurance generally, although in some cases the claims may strictly arise under sects. 1, 2 (1) (a), 2 (1) (c), or 2 (1) (d) of the Finance Act, 1894, with special reference to the local situation of the policy moneys and the effect of such local situation on the claim for Estate Duty.

Policies of Insurance on Life of the Deceased.

I. *Policy forming part of Deceased's Free Estate.*

A. Deceased Domiciled in the United Kingdom.

Estate Duty is clearly payable on deceased's death on the policy moneys under sects. 1 or 2 (1) (a) of the Finance Act, 1894, and the question of the local situation of the policy moneys is only material for the purpose of ascertaining whether the moneys should be included in Account No. 1 or Account No. 2 of the Inland Revenue affidavit of the deceased's estate.

The general rule of law is that simple contract debts are locally situate where the debtor resides, and specialty debts are situate where the specialty is found at the death. (See *Commissioners of Stamps* v. *Hope*.)

This rule was in its origin purely domestic in England, and arose out of the necessity of preventing conflicting jurisdictions between the different Ordinaries as to effects which were so situated that they would be disposed of in "pios usus." (See per Lord Abinger, C. B., in *Att.-Gen.* v. *Bouwens* (1838), 4 M. & W. 171, at p. 191.) The rule as to the situation of debts owing from abroad is thus laid down by Esher, M. R., in *Att.-Gen.* v. *Sudeley*, [1896] 1 Q. B. p. 360:—

"As to debts due to the testator at the time of his death, the rule to be deduced from the cases is that if the debtor is at the time of the death of the testator abroad and the debt is payable only abroad and could only be got from him abroad either by some act to be done there or some proceeding taken there, the debt is a foreign asset; but if, although the debtor is abroad, a legal proceeding could be taken here which would in

law directly order and enforce the payment here of the debt, then the debt is an asset here."

The decision of the Court of Appeal in *Att.-Gen.* v. *Sudeley* was reversed by the House of Lords, but on grounds which did not affect the validity of Lord Esher's views.

The rule that a specialty debt is situate where it happens to be is unknown in Scotland. The rule under Scots law is that a creditor must follow his debtor and that the residence of the latter governs the situation, except that (a) where security has been given, or (b) where payment in a particular place has been stipulated, for there is in the one case an alternative and in the other case a substituted situation.

The Scottish Rule agrees with the views of Lord Esher in *Att.-Gen.* v. *Sudeley* and of the Privy Council in *Walsh* v. *The Queen.*

If the debtor is a company or corporation, it must be remembered that a corporation may have two domiciles and be subject to two jurisdictions, per Lord St. Leonards in the House of Lords in *Carron Iron Co.* v. *Maclaren.*

For instance, a French corporation incorporated by French statutes and carrying on business in France, but having a branch office in London where it carried on one of the principal parts of its business, is to be considered as resident in England and treated as if it were established by English law. (See *Haggin* v. *Comptoir D'Escompte de Paris.*) Foreign insurance companies carrying on business in England must therefore be regarded as resident here.

When the obligation to pay a simple contract debt is primarily confined to a branch of a company (insurance, banking, or otherwise), the debt is to be regarded as situate where the branch is. (See *The King* v. *Lovitt*, [1912] A. C. 212.)

Policies must therefore be considered as divided into two classes: (1) Those under hand only; and (2) those under seal.

(1) *Policies under Hand only.*

(a) If the head office of the insurance company is in the United Kingdom the moneys are locally situate in the United Kingdom. In this case the policy moneys should be included in Account No. 1 of the Inland Revenue affidavit.

(b) If the head office of the company is situate abroad the moneys are situate (unless they fall within the second part of the rule stated by Lord Esher above) abroad, and they should be in Account No. 2.

(2) *Policies under Seal.*

(a) Head office of the company in the United Kingdom. In this case, if the policy happened to be abroad at the deceased's death, the ordinary rule of law would be that the moneys are situate abroad, but 25 & 26 Vict. c. 22, s. 39, enacted as follows:—

39. For the purposes of the stamp duties on probates of wills and letters of administration, debts and sums of money due and owing from persons in the United Kingdom to any deceased person at the time of his death on obligation or other specialty, shall be estate and effects of the deceased within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

The result of this enactment is that specialty debts due from persons in the United Kingdom are, for the purpose of Stamp Duties on probates or letters of administration, assimilated to simple contract debts, so as to make them assets locally situate where the debtor resides (and not where the instrument is found) at the owner's death. This only applies where a grant is necessary to the deceased's free estate.

(b) Head office of the company abroad. The policy moneys are situate wherever the policy is found at the death, unless the case falls within the second part of the rule stated by Lord Esher above.

B. Deceased Domiciled out of the United Kingdom.

(1) *Policy under Hand only.*

(a) Head office of the company in the United Kingdom. The policy moneys are situate in the United Kingdom, but the insurance company may pay over the policy moneys without requiring a grant of representation to be taken out in this country. (See sect. 19 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), and *Haas* v. *Atlas Insurance Co.*) Estate Duty is however, payable on the deceased's death.

(b) Head office of the company out of the United Kingdom. The policy moneys are situate abroad and are not liable to Estate Duty on the deceased's death. If, however, the policy was taken out at and payable at the London branch office of the foreign insurance company carrying on business in the United Kingdom, the asset would fall within the second part

of the rule stated by Lord Esher above and Estate Duty would be chargeable thereon.

(2) *Policy under Seal.*

(a) Head office of the company in the United Kingdom. The policy moneys are situate wherever the policy is found at deceased's death, but no grant of representation is necessary here (see sect. 19 of the Revenue Act, 1889); therefore sect. 39 of 25 & 26 Vict. c. 22 (set out under heading A. (2) (a)), has no application. Estate Duty is, however, payable if the policy is in the United Kingdom at the deceased's death or if the policy is payable in this country.

(b) Head office of the company out of the United Kingdom. The remarks under heading B. (2) (a) are applicable in this case.

II. *Policy not forming part of Deceased's Free Estate, but payable to a donee, whether nominee or assignee, Deceased having paid all the premiums.*

The domicile of the assured seems to be immaterial.

(1) *Policy under Hand.*

(a) If the head office of the insurance company is in the United Kingdom, the moneys are locally situate in the United Kingdom, and Estate Duty is payable under sect. 2 (1) (c) of the Finance Act, 1894, incorporating sect. 11 (1) of the Customs and Inland Revenue Act, 1889; and under sect. 2 (1) (d) of the Finance Act, 1894.

(b) If the head office of the company is abroad, the moneys are locally situate abroad, and are not liable to Estate Duty here, unless the policy is taken out and payable only at a branch office in the United Kingdom of the foreign insurance company.

(2) *Policy under Seal.*

(a) If the head office of the company is in the United Kingdom, sect. 39 of 25 & 26 Vict. c. 22, does not apply, and the policy moneys are situate wherever the policy is found at the deceased's death; but it is conceived that, even if the policy is abroad at the death, if the policy is taken out in and payable in the United Kingdom Estate Duty is payable under sect. 2 (1) (c) of the Finance Act, 1894, incorporating sect. 11 (1) of

the Customs and Inland Revenue Act, 1889 (also under sect. 2 (1) (d) of the Finance Act, 1894), as the right of action for the policy moneys is against the British company, and Succession Duty would have been payable under the law in force before the Finance Act, 1894.

(b) If the head office of the company is abroad, the policy moneys are situate wherever the policy is found at deceased's death. If the policy is in the United Kingdom at the deceased's death, a claim for Estate Duty arises. If the policy is abroad at deceased's death, no claim for Estate Duty arises, unless perhaps the policy is taken out at and payable at a branch office in the United Kingdom of the foreign insurance company.

Haas v. *Atlas Insurance Company, Limited.*

On the 13th August, 1912, H. died domiciled in Switzerland. He left a will duly executed according to Swiss law, and made no disposition of the policies or moneys payable thereunder otherwise than by his will, of which the plaintiff was appointed executor. By Swiss law the plaintiff was the person who had the right to collect the policy moneys and the power of giving a good discharge. He applied to the defendants for payment of 1,000*l.*, as the amount payable on the life of the deceased, who was described in the policies as of Bale, Switzerland. The defendants denied that they were bound to pay till the plaintiff obtained a grant of representation from an English Court, as the money was payable to the assured's executors, administrators, or assigns, which meant English executors, administrators, or assigns, and that the plaintiff did not fill any of such capacities. It was contended on behalf of the plaintiff that by virtue of sect. 19 of the Revenue Act, 1889, amending sect. 11 of the Revenue Act, 1884, the plaintiff was entitled to recover without a grant of representation in this country. It was submitted on behalf of the defendants that there was no obligation on the defendants to pay, even if that section conferred upon them a discretion to do so.

Held (by Scrutton, J., on the 20th February, 1913) that the executor was entitled to recover without producing a grant of representation from an English Court. As to Estate Duty, if it was payable, sect. 9 of the Finance Act, 1894, gave a charge to the extent of the duty on the moneys, and if the defendants retained out of the moneys an amount equal to the duty, they would not be going beyond their legal rights. The defendants

could inform the Government, and then it might be decided in interpleader proceedings whether the Crown was entitled to Estate Duty or not. There would be judgment for the plaintiff with costs, the defendants to retain 40*l.* out of the policy money till it was seen whether the Crown made any claim to Estate Duty.

The following is a somewhat similar case, but the policy moneys were payable to a mortgagee:—

In re Loir's Policies.

In 1872 one Loir, a French subject resident in Egypt, effected a policy on his life with the Eagle Insurance Co. for 750*l.* and bonuses, and in 1887 he effected another policy on his life with the company for 1,500*l.* and bonuses. Subsequently he mortgaged both policies to the company to secure certain loans and interest. In September, 1912, Loir assigned both policies to Lydia Cheab, a married woman domiciled and resident in Egypt, to secure 1,800*l.* advanced to him by her out of her own moneys, and she gave notice of her assignment to the company. In October, 1912, Loir died, being at the date of his death a French subject domiciled in Egypt. In consequence of the conflicting claims to the policy moneys received by the company they, after deducting the amount due to them on their mortgages, paid 1,757*l.* 16*s.* 8*d.*, the balance of the policy moneys, into Court under O. LIV. (c), and in the affidavit of their secretary set out the names and addresses of the claimants, all of whom were resident in Egypt. The claimants included Lydia Cheab, the children of Loir, and certain of his creditors.

In March, 1913, Lydia Cheab commenced proceedings before the French Consular Court in Egypt to establish her title to the policy moneys, and the defendants thereto were the company, all the persons mentioned in the affidavit of the secretary, and the legal personal representative in Egypt of Loir. The company did not appear to these proceedings, and took no part therein. On 15th July, 1913, the Consular Court by their final judgment decided that the plaintiff was the only and lawful assignee of the policies. She now petitioned that the funds in Court, which were insufficient to satisfy the amount due on her mortgage, might be paid out to her. The petition had not been served on anybody, but the company had notice of it. No representation to Loir had been taken out in England.

Neville, J., dispensed with service of the petition on the

parties named in the secretary's affidavit and ordered payment out to the petitioner, being of opinion that *representation in England to Loir was unnecessary*, and that *no duty was payable*.

(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

The following are examples of annuities and other interests falling under this sub-clause:—

(1) An ordinary Post Office annuity purchased by the deceased for the joint lives of himself and wife, and for the survivor (the wife) for life.

(2) Annuities payable to the widows and children of ministers of dissenting communities.

(3) Annuities payable to the widows of bank clerks under the rules of their provident funds.

(4) Sums payable under the rules of certain benefit societies, where each member pays an entrance fee, and on the death of a member, all the other members are required to contribute a certain prescribed sum—such sums being payable to a nominee, or in some cases to the next of kin of the deceased member.

(5) A policy of insurance on the deceased's life, if given absolutely to a donee, or taken out in the name and for the benefit of another person, is liable to Estate Duty under this sub-section if the deceased continues to pay the premiums during his life.

If the deceased pays some of the premiums after the gift or the taking out of the policy for another, and then ceases to pay the same, but the policy is kept up, there is apparently a claim for Estate Duty on the proportion attributable to the premiums paid by the deceased.

(6) A policy of insurance on the deceased's life settled by him in consideration of his marriage, where he covenants to keep up the premiums. (See *Att.-Gen.* v. *Dobree.*)

The Estate Duty is payable, in these cases, on the extent of the benefit accruing or arising on the death.

(7) Benefits which the deceased has power to nominate in partnership deeds. For instance, the deceased may have reserved in his partnership articles power to nominate his share

of the capital and goodwill of his business to his son, without the latter making any or only a nominal payment therefor.

If the annuity provided by the deceased is for, say, the life of A., the value for the purposes of Estate Duty is the actuarial value according to A.'s age. If the interest provided is a sum of cash, as in *Att.-Gen.* v. *Dobree*, the duty is payable on the actual amount of cash.

An annuity not exceeding 25*l.* provided by the deceased either alone or in concert or arrangement with another person, and pensions or annuities payable by the Government of British India to the widow or child of any deceased officer of such Government, are exempted from Estate Duty by sect. 15 (1) and (3).

By sect. 16 of the Finance Act, 1896, the duty in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in sect. 2 (1) (d) of the principal Act, may be paid by four equal yearly instalments.

Estate Duty was held to be payable under this sub-section in the three following cases :—

Att.-Gen. v. *Dobree.*

By an indenture of settlement, dated 20th September, 1867, made in pursuance of marriage articles, Falconer J. Atlee settled a policy on his own life (assigned to the trustees by an indenture of 19th September, 1867), upon trust that the trustees should receive the proceeds on his death, and hold same in trust for his wife for life, remainder for his children as therein mentioned. F. J. Atlee covenanted to pay the premiums, and did so pay them until his death on the 2nd October, 1894.

Held (by Darling and Channell, JJ.) Estate Duty was payable on his death under sect. 2 (1) (d) of the Finance Act, 1894.

Channell, J., said: "The 1,500*l.* payable under the policy '*passed*' on the death of the deceased because it became payable, and in that sense it passed."

Att.-Gen. v. *Hawkins.*

In pursuance of a family arrangement the tenant in tail of certain estates barred his estate tail therein, in order that he and his father, the life tenant, might raise money by mortgage on the fee to pay the life tenant's debts. The life tenant brought into the arrangement certain policies on his life, which were assigned to trustees upon certain trusts, and out of the

income of the estates the interest on the mortgage on the fee and the premiums of the policies were to be paid, the surplus being divided in certain proportions between the tenant for life and his son.

The tenant for life died 10th May, 1898, and the trustees received the proceeds of the policies on his life, and in pursuance of the trusts paid and accounted for the same to his son, the former tenant in tail.

Held (by Kennedy and Phillimore, JJ.) that Estate Duty was payable on the proceeds of the policies—in the words of Mr. Justice Kennedy, the result was 70,000*l.* was taken out of the settlement by the mortgage, and 69,500*l.* was brought in, in the form of the policies—and there was no purchase of them within sect. 3 of the Finance Act, 1894. It seems, if these policies had been assigned out and out to the son so that he could have surrendered them, as in *Lord Advocate* v. *The Earl of Fife* (11 Rettie, 222), that no Estate Duty would have been payable.

Att.-Gen. v. *Robinson.*

A. on his marriage in 1843 had assigned four policies of insurance, and his intended wife had assigned 3,500*l.*, to trustees on trust as to the moneys secured by the policies, when received, to pay the income thereof to the wife for life and, after her death, as to the capital for the children of the marriage; and the trustees were, after the marriage, to apply so much of the income of the wife's moneys as might be necessary to pay the premiums upon the policies, and to pay the residue thereof to the husband for life and after his death to the wife for life, and after the death of the survivor to the children of the marriage. The policies were kept up and the annual premiums paid out of the income of the moneys brought into settlement by the wife until the death of A. in 1898, when the policy moneys became payable. A.'s wife predeceased him.

The Crown claimed Estate Duty on the policy moneys under sect. 2 (1) (d), and the Court decreed accordingly, holding that the marriage contract formed a provision by A. by arrangement with his wife.

This sub-section was held not to apply in

Att.-Gen. v. *Murray.*

On the 25th July, 1866, Sir Henry William Peek effected a policy for 10,000*l.* on the life of his son, Cuthbert Edgar Peek,

for which ten premiums only were payable, and the last of such premiums was to be and was paid on the 25th July, 1875. On the marriage of C. E. Peek in 1884, the said Sir H. W. Peek, with the approbation of his son, by settlement of 2nd January, 1884, settled the policy in trust for the wife, Augusta Louisa Peek, for life, and after the death of the survivor of the husband and wife in trust as therein mentioned.

On C. E. Peek's death, on the 6th July, 1901, the insurance company paid over the policy moneys to the trustees of the marriage settlement, although the policy might have been void under 14 Geo. 3, c. 48, owing to Sir H. W. Peek having no insurable interest in his son's life. Estate Duty was claimed on the policy moneys as property deemed to pass on Sir C. E. Peek's death.

Held (by Ridley, J.) the policy was an interest provided by Sir C. E. Peek in concert or arrangement with his father, and so Estate Duty was payable under sect. 2 (1) (d) of the Finance Act, 1894. Ridley, J., said he would not stop to consider whether it was also within sect. 1, for it was not necessary for this decision. But the Court of Appeal (Collins, Mathew, and Cozens-Hardy, L. JJ.) reversed this decision, and held that though the policy was property within the scope of sect. 2 of the Finance Act, 1894, it was not provided by the deceased in concert or arrangement with another, and therefore Estate Duty was not payable. The case was not argued under sect. 1.

In consequence of this decision it follows that if a person covenants to pay a capital sum or an annuity on the death of some other person to the trustees of a settlement or otherwise, Estate Duty will not be payable on the death of such other person.

For example:—

> A. covenants by the marriage settlement of his son B. to pay 10,000*l.* on the death of C. (died 1906) to the trustees of such settlement to be held on the trusts therein declared. Estate Duty is not payable on C.'s death on such sum.

This example, of course, does not apply to capital sums or annuities covenanted to be paid on the covenantor's own death, as to which see notes under sect. 7 (1), nor to annuities passing on a death as mentioned at p. 23.

This sub-section was also held not to apply in:—

Att.-Gen. v. *Lethbridge.*

The facts are as follows:—

By the will of Sir Wroth Lethbridge, dated 28th December, 1848, certain estates were devised in events to his grandson, Sir Wroth Acland Lethbridge, for life (who died 26th November, 1902, and is hereafter called the deceased). Remainder to his eldest son (the defendant) in tail.

At the date of the next hereafter mentioned indenture, the deceased had raised by way of charge on his life estate and certain policies of insurance on his life (including the fifteen policies hereafter mentioned) 59,121*l.*

By an indenture of 4th March, 1885 (duly enrolled as a disentailing assurance), the deceased and his said son conveyed the estates, freed from said estate tail, to a trustee upon such trusts as they should jointly by deed appoint, in default on the trusts of the said will.

By an indenture of 10th June, 1885, deceased and his son appointed and conveyed certain portions of the said estates to Sir W. F. Pollock, by way of mortgage, to secure the repayment of 71,000*l.* advanced to them.

The said mortgage of 59,121*l.* was paid off out of said 71,000*l.*, and the policies were re-assigned to the deceased.

By an indenture of 19th August, 1885, after reciting that the aforesaid deeds and payment were part of a family arrangement, and it was a further part of such arrangement that the said fifteen policies should be kept up out of the rents of the estates, and the policies should be assigned to the son absolutely, and reciting that by another indenture of the 19th August, 1885, the estates, subject to certain rent-charges and the said mortgage, had been appointed, subject to certain annuities, to Thomas Yate Benyon during the life of the deceased, upon trust for the management of the estates, and out of the rents to pay (1) the rent-charges, annuities, interest on the mortgage, and then to pay (2) the premiums for keeping on foot the said policies or restoring same if any should become voidable, but so that if any policy should, during the deceased's life, be surrendered by the son, to the office granting the same, and the annual premium should cease to be payable, the amount of such premium should not cease to be raisable, but should be raised and paid to the son, and in the next place to pay (3) 1,000*l.* per annum to the son, and subject thereto the premises thereby appointed and granted were to be in trust for the deceased for life, and after his death to the use of the son in fee simple. It

was by this indenture witnessed, in further pursuance of said family arrangement, deceased assigned said fifteen policies to his son for his own use and benefit.

The amount of said fifteen policies was at the date of the said arrangement 26,500*l.*, with bonuses of 3,567*l.* 4*s.* 2*d.* The premiums were between 800*l.* and 900*l.* The son, by an indenture of 1st November, 1892, and five subsequent indentures, mortgaged the policies to secure sums advanced to him. The mortgages contained no covenant by the son to keep up the policies, but he assigned to the mortgagees the benefit of said indenture of the 19th August, 1885, for keeping up the same.

By an indenture of the 8th September, 1898, the deceased in consideration of 4,100*l.* assigned (by way of surrender) his life interest in the said estates (subject to the said mortgage and the trusts of the said indenture of the 19th August, 1885, for keeping up the policies) to his son, his heirs and assigns, to the intent his life estate might merge in the reversion.

The purchase-money of 4,100*l.* was calculated on the footing that the son was entitled to have the premiums on all the policies during the deceased's life.

On the 8th January, 1902, the son paid off the mortgages he had created on the policies, and by an indenture of the 9th January, 1902, he again mortgaged the same policies and covenanted to pay the premiums.

Sir Wroth A. Lethbridge died on the 26th November, 1902, and all the moneys secured by the policies and the bonuses thereon were paid to the son (the defendant).

No premium in respect of five of the policies fell due or was paid after the 8th January, 1902.

The Commissioners of Inland Revenue claimed Estate Duty under sects. 1 and 2 (1) (c) and 2 (1) (d) or one or more of these sections on the policy moneys, or alternatively on such moneys, less a sum in proportion to the premiums paid in respect of any of the policies after the 8th January, 1902, or alternatively on the moneys received under the policies in respect of which no premium was paid after the 8th January, 1902.

It was held (by Phillimore, J.) that no Estate Duty was payable. The keynote to his judgment was (he stated) the fact that the son was to have the amount of the premiums, whether the policies were surrendered or not. The father either gave or sold the policies to his son out and out.

The Court of Appeal (Collins, M. R., Mathew and Cozens-Hardy, L. JJ.) unanimously reversed the decision of Phillimore,

J., and held the policies were liable to Estate Duty under sect. 2 (1) (d) of the Finance Act, 1894. The House of Lords (Loreburn, L. C., and Lords Macnaghten, Robertson, and Atkinson), on the 3rd December, 1906, unanimously reversed the decision of the Court of Appeal, and restored that of Phillimore, J.

The Lord Chancellor said: "Did the son give in money or money's worth full consideration for the policies and the other advantages he acquired under the arrangement? It is indisputable that he gave full value and more. He made a sacrifice as a son for his father's sake.

"Having taken over these policies the son might have allowed them to lapse. He preferred to keep them alive and paid the premiums in substance out of the moneys he received annually from the life interest of his father, pursuant to the family arrangements. He might have spent the money otherwise if he pleased, but even if he had not been free to spend it as he liked, that circumstance would have made no difference in my opinion. The son had given full value for the annual payments which were to be made to him out of the life estate. Therefore it could not be said the father was keeping up the premiums on these policies, though the moneys which kept them up came out of his life estate.

"If I thought the case fell within sect. 2 (1) (d) (as I do not) I should still think that these policies were exempted from Estate Duty by virtue of sect. 3 (1) of the same Act (Finance Act, 1894), upon the ground that there had been a purchase for full value within the meaning of that section."

In order that Estate Duty may be payable under this subclause, the deceased must purchase or provide some part of the beneficial interest arising on his death. If he is recouped for the payments he may have made, no Estate Duty is payable. See

Richardson and others v. *Commissioners of Inland Revenue.*

E. J. R. became entitled under her marriage settlement, dated 1853, to the income of certain property, with restraint on anticipation. In 1859, her husband, J. R., effected a policy of insurance on his life. In 1861, she verbally agreed that the income to which she was entitled under the settlement of 1853, should be applied, when received, in payment of the premiums on the policy and on any additional policies J. R. might effect as their family increased. She at the same time agreed that

out of the arrears of income accumulated in the hands of the trustees of the settlement, J. R. should be recouped the two years' premiums paid by him on the policy since 1859. Between 1861 and 1876, J. R. effected five additional policies on his life. The income to which E. J. R. was entitled as aforesaid, and which she agreed to hand over, was more than sufficient to pay the premiums on the policies, so that J. R., down to the time of his death, was never under the necessity of drawing on his own resources for that purpose.

By a deed of 1887, reciting that J. R. was entitled to the policies, he assigned them on trust for his wife for life, with remainder to his children, and covenanted to pay the premiums. E. J. R. was not a party to that deed.

J. R. died on 18th June, 1906. Estate Duty was claimed and paid on the aforesaid policies on his death. On an appeal to recover the duty, under sect. 10 of the Finance Act, 1894, it was held, on the 29th June, 1909, in the King's Bench Division, Ireland (Palles, C. B., Andrews and Johnson, JJ.), that the policies had not been purchased or provided by the deceased within the meaning of sect. 2 (1) (d) of the Finance Act, 1894, and were therefore exempt from Estate Duty on the death of J. R.

Compensation payable on the death of any person either under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1897, is not considered liable to Estate Duty under this or any section of the Finance Acts.

Goodwill of a business passing to the surviving partners under the partnership articles was held not to fall within the terms of this sub-clause in *Att.-Gen.* v. *Boden*.

Estate Duty was held to be payable under this sub-clause on the cesser of premiums on a policy payable under a settlement. See

Inland Revenue v. *Scott's Trustees.*

As a provision for his daughters, the deceased by (*inter vivos*) trust disposition and assignation dated 4th February and recorded 5th April, 1899, conveyed to trustees heritable properties in Dundee, policies of assurance on his life for 6,600*l.* and bonuses, certain investments, and 300*l.* in cash. The purposes of the trust were to pay the premiums to keep the policies in force and to pay the balance of the income to the daughters for their lives, and on their respective deaths to pay the capital of their shares to their issue with other

trusts over. Power was given to the trustees to sell, assign, or surrender the policies, to uplift and recover the proceeds thereof, and generally to do everything in relation thereto which the settlor could have done. The policies were not surrendered, and the trustees paid the premiums until the deceased's death in March, 1914.

The Crown claimed Estate Duty on the deceased's death in respect of:—

(a) the proceeds of the policies, and

(b) the capital required to produce the annual sum of 239*l.*, being the amount of the premiums which ceased to be payable,

on the ground that they constituted interests provided by the deceased within sect. 2 (1) (d) of the Finance Act, 1894.

Held by the First Division of the Court (on the 18th June, 1918) that Estate Duty was chargeable on the policies and on the portion of the trust fund set free by the cesser of the premiums.

The exclusion in sect. 59 (2) of the Finance (1909–10) Act, 1910, of gifts in consideration of marriage from the charge of Estate Duty does not exempt provisions in consideration of marriage from Estate Duty under this sub-clause (d).

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

This sub-section is of so great importance that it is dealt with at length in the chapter on Foreign Assets and Foreign Domicile.

The effect is that unless it can be shown that the property situate out of the United Kingdom would, before the Finance Act, 1894, have been liable (but for the relationship of the parties) to pay either Legacy or Succession Duty on the death of the deceased, no Estate Duty is payable thereon. The words "but for the relationship of the parties" are put in to meet the case of, for example, husband and wife, who, of course, were not liable to either Legacy or Succession Duty on property derived from each other.

When a testator dies domiciled in the United Kingdom

leaving two wills and two executors, one will and one executor for the foreign property and one will and executor for the English property, the English executor is accountable for the Estate Duty on the foreign moveables to the extent of the assets which he has received as executor, or might but for his neglect or default have received. (See sects. 6 (2) and 8 (3), Finance Act, 1894; also *Lord Advocate* v. *Douglas*, p. 518, and *Re Consuelo, Duchess of Manchester, Duncannon* v. *Manchester*, p. 519.)

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

By sect. 59 (1) of the Finance (1909–10) Act, 1910, the period of twelve months is extended to three years where the deceased dies on or after 30th April, 1909, except as to dispositions made before the 30th April, 1908, or made or effected for public or charitable purposes, but this extended period is not to prejudice the rights of mortgagees or purchasers whose interests arose before the 30th April, 1909. (See sect. 64 of that Act.)

This sub-section excludes property passing on the death under certain dispositions of which deceased was a trustee, divided into two classes of dispositions: (1) Dispositions *not* made by deceased, a class obviously not intended to fall under sects. 1 or 2; (2) dispositions made by deceased (a) more than twelve months (now three years) before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise; (b) more than twelve months (now three years) before his death, where such possession and enjoyment *was not* assumed by the beneficiary, &c.; or (c) if the disposition was made within twelve months (now three years) of the deceased's death. The

sub-section only applies to classes (1) and (2) (a), but not to (2) (b) and (c), the two latter being liable to Estate Duty under sect. 2 (1) (c).

3.—(1) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

"**By reason only of a bonâ fide purchase from the person under whose disposition the property passes.**"

This applies to the following ordinary cases :—

1. A. being entitled to Blackacre sells it for full consideration to C. as from A.'s death.
2. A., in 1895, in consideration of 1,000*l.*, gives B. a *post obit* bond for 1,000*l.* with interest at 7 per cent. as from 1895.
3. A., in consideration of 100*l.* paid to him by B., effects a policy on his own life in the name of B. to secure the 100*l.* with interest, and A. covenants to pay the premiums.

In none of the above cases is Estate Duty payable on A.'s death.

It was contended in *Att.-Gen.* v. *Dobree* (see p. 67) that sect. 3 exempted the policy moneys in that case from Estate Duty, but Darling, J., said : "I do not think that provision applies; it seems to me to be aimed at something entirely different from what happened here. I think it is aimed at the kind of case where a person has bought something and paid for it a price—a consideration in money or money's worth—but is not to get the benefit of his purchase until the death of his vendor. In such a case the Legislature has recognised that it would be

unjust to make him pay upon the death of his vendor where he has paid the full value of the interest to the vendor, it may be, years ago." Neither does this section apply to a mere change in the security for an annuity, as in

Att.-Gen. v. *Smith Marriott.*

By an indenture dated the 25th May, 1853, Sir John James Smith, in exercise of a power in a settlement dated the 13th July, 1813, granted his wife, Dame Frances Smith, a jointure of 400*l.* per annum for her life, issuing out of estates in Lincolnshire as from his death, which happened on 3rd September, 1862. In 1870 the Lincolnshire estates were sold by the defendant, Sir W. Henry Smith Marriott (the successor in title of Sir J. J. Smith), partly to Sir James Banks Stanhope and partly to Samuel Grant, subject to the rent-charge, and as an indemnity to the purchasers part of the purchase-money was invested in 13,333*l.* 6*s.* 8*d.* Reduced 3 per Cent. Annuities in names of trustees upon trust indemnifying the purchasers against the rent-charge, and subject thereto in trust for Sir W. H. Smith Marriott absolutely.

In addition to the Lincolnshire estates, defendant was also entitled to certain Dorsetshire estates. In 1883 defendant came to an arrangement with Dame Frances Smith whereby she released the Lincolnshire estates from her jointure, and defendant charged his life interest in the Dorset estates and certain policies on his life with the payment to her of 400*l.* per annum.

Dame F. Smith died 1st June, 1895. Held (by Darling and Phillimore, JJ.) Estate Duty was payable on the cesser of the 400*l.* jointure, as the transaction was merely a change of the security and not a grant of an annuity for full consideration.

The Scottish Courts came to the same conclusion in *Inland Revenue* v. *Lyell* (see p. 326).

Again, in *Att.-Gen.* v. *Hawkins* (see p. 67), this section was held not to apply to a case where a life tenant and tenant in tail mortgaged the fee of the estates to pay off mortgages on the life tenant's life interest and policies on his life, and the policies were settled on the trusts of the land. Estate Duty was therefore payable on the policy moneys on the life tenant's death.

This section was held to apply in *Att.-Gen.* v. *Lethbridge* (see p. 70) and in

Att.-Gen. v. *Boden.*

A father and his two sons carried on the business of lace or plain net manufacturers under a deed of partnership which included covenants (among others) to the following effect:— Neither of the sons was, without the consent of the father, to be directly or indirectly engaged in any trade or business except on account and for the benefit of the partnership; both the sons were bound to give so much time and attention to the business as the proper conduct of its affairs required; the father was not bound to give more time or attention to the business than he should think fit; if the father should die his share was to accrue to the sons in equal shares, subject only to their paying out to his representatives the value of his share and interest at his death, as ascertained by an account to be made as on the day of his death with all proper valuations, but without any valuation of or allowance for goodwill, which goodwill was to accrue to the sons in equal shares. The father died. The value of his share and interest at his death was ascertained by an account taken as directed by the deed of partnership without any valuation of or allowance for goodwill. The share and interest so ascertained amounted to a large sum, and Estate Duty was paid on that sum.

The Crown claimed Estate Duty on the value of the father's share in the goodwill on the ground that it was—

(1) Property which passed on the death of the father within sect. 1 of the Finance Act, 1894; or

(2) Property in which the deceased had an interest ceasing on his death in which a benefit accrued or arose to the sons by the cesser of that interest within sect. 2 (1) (b) of the Act; or

(3) Property passing under a settlement by deed whereby an interest for life was reserved to the father, and, therefore, property which would be required on the death of the father to be included in an account under sect. 38 of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, and within the provision of sect. 2 (1) (c) of the Finance Act, 1894; or

(4) An interest provided by the father in which a beneficial interest accrued or arose by survivorship on the death within sect. 2 (1) (d) of the Act.

The Court, after hearing evidence on the question of the

value of the goodwill, decided that it was of small value. It was held (by Hamilton, J., on the 5th April, 1912) that, having regard to the obligations of the sons under the partnership, the share and interest of the father in the goodwill of the business passed on the death of the father to the sons, by reason only of a *bonâ fide* purchase for full consideration in money or money's worth paid to the father for his own use and benefit within the meaning of sect. 3 (1) of the 1894 Act. It was also held that this was a question for the Court and not for the Commissioners, under sect. 7 of the Finance Act, 1894, to determine.

It was further held that the father's share in the goodwill did not fall under the headings (1), (3), or (4), but did fall under heading (2).

This section was held not to apply in

Watson's Trustees v. *Commissioners of Inland Revenue.*

W. W. (son of D. W., senior) died unmarried and intestate in August, 1875, survived by his father and four brothers. Accordingly (under Scots law), one-half of his property, which was wholly personal estate, passed to his father, and the other one-half to his four brothers equally. An agreement was entered into between the said next of kin under which the whole estate was to be held in trust for D. W., senior, for life, and then for his wife for life, and on the death of the survivor to be divided equally amongst the said four sons.

In 1887 D. W., junior (one of the sons), died unmarried and intestate, leaving no estate except his interest in the trust estate. Inventory Duty was paid on that interest.

D. W., senior, died in January, 1898, and his wife died in February, 1899. Estate Duty was claimed on the whole estate as passing on D. W., senior's death.

It was held (by Sheriff-Substitute Strachan) that sect. 15 (1) and (2) of the Finance Act, 1896, applied so far as the property was settled by the *surviving* sons, to exempt the same from Estate Duty on the death of D. W., senior, as well as on the death of his wife in 1899. He held also that sect. 3 (1) of the Finance Act, 1894, did not apply to the case. It follows therefore that there was a claim for Estate Duty on the moiety settled by D. W., senior, and also on the original one-eighth share settled by D. W., junior, although as regards the latter one-eighth it is now considered that, having regard to sect. 21 (1) of the Finance Act, 1894, *Att.-Gen.* v. *Dodington*, and the

fact that Administration or Inventory Duty was paid on this share under D. W., junior's intestacy, and the tenant for life having died before 15th August, 1914 (see sect. 14 of the Finance Act, 1914), it would be exempt from Estate Duty.

"**Nor in respect of the falling into possession of the reversion on any lease for lives.**"

Examples:—

1. A., in consideration of 200*l.*, grants B. a lease of Blackacre for life, and in 1896 A. sells Blackacre, subject to such lease, to C. No Estate Duty is payable by C. on B.'s death.
2. A., in consideration of 200*l.*, grants B. a lease of Blackacre for life. A. dies in 1904, and leaves all his property by will to C. B. dies in 1905. Estate Duty is not payable on Blackacre by C. on B.'s death.

Of course, in the second case, if any ground rent was payable by B., then Estate Duty would be payable on A.'s death on the capitalised value thereof, and in any event Estate Duty would be payable under A.'s will on the value of Blackacre when it reverted to A.

"**Nor in respect of the determination of any annuity for lives.**"

Example:—

A. purchases an annuity of 50*l.*, payable during his own life, from B. Estate Duty is not payable on A.'s death.

"**For full consideration in money or money's worth.**"

These words exclude transactions in consideration of marriage.

"**For his own use or benefit, or, in the case of a lease, for the use or benefit of any person for whom the grantor was a trustee.**"—The latter words apparently apply to cases of settled estates where the grantor of the lease is probably the trustee of the settlement, and the consideration is paid to him on behalf of the beneficiaries under the settlement.

This section was also pleaded as a defence in the case of *H.M. Advocate* v. *Captain and Mrs. Heywood-Lonsdale's Marriage Contract Trustees* (10,000*l.* action). (The facts are given under sect. 2 (1) (c), on p. 40.)

The benefits conferred by this section are extended to a person taking under a gratuitous title from the original vendor or grantor.

(2) Where any such purchase was made or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

It is difficult to imagine the exact class of cases to which this sub-section was intended to apply, because if the parties to the transaction are absolute strangers dealing at arm's length, there may be very great inadequacy in the consideration on account of one of the parties being an expert and the other an uneducated old woman, and still there may be a *bonâ fide* sale, and in that case no Estate Duty would be payable at all.

It may be observed that in *Att.-Gen.* v. *Johnson* (see p. 47), Mr. Justice Phillimore thought sect. 3 (2) applied to that case, and that an allowance of 210*l.* (being the value of an annuity of 25*l.* for the lives of Mr. and Mrs. Burton) should be made against the 500*l.*, but the Court of Appeal held that the transaction was not a *bonâ fide* purchase of an annuity at all, but "a testamentary gift effected by the machinery of a present donation, subject to the reservation of something intended to be equivalent of a life interest in the subject-matter of the donation," and therefore sect. 3 (2) did not apply.

Att.-Gen. v. *Wack.*

The facts are as follows:—

A person domiciled in New York died in London on 23rd September, 1898. On 7th September, 1898, a transfer of 2,500 ordinary shares of the deceased in an English company was executed by the son of the deceased as his "attorney in fact," the deceased being paralysed. The consideration stated in the transfer was 10*s.* The transferee was the deceased's American lawyer, H. W. Wack. It was alleged by him that the consideration for this transfer was a promise to act as director of the company if he should be elected. He was never elected. This transfer was registered by the company. On the 19th September, 1898, the deceased's son, purporting to act in exercise of a power of attorney, dated 13th July, 1898,

authorising him to sell the deceased's shares, executed transfers to Mr. Wack of 100,000 preference shares in the said company (worth 17*s.* 6*d.* each), and of 47,500 ordinary shares (worth 13*s.* 9*d.* each), the consideration stated in the transfers being respectively 3,000*l.* and 2,000*l.*, and also in each case "professional services rendered and moneys expended during the then last three years" for the deceased. Before the last-mentioned transfers had been registered in the books of the company, an English information was filed (on 21st October, 1898) against Mr. Wack and the company for Estate Duty on the 150,000 shares, valued at about 120,000*l.* An injunction had been obtained *ex parte* on the 20th October restraining registration of the transfers. This injunction was continued, and a receiver was appointed of the shares by order of the 27th October. By order of 6th December, 1898, the injunction and appointment of the receiver was discharged on payment into Court by the defendant Wack of a sum sufficient to cover duty and costs.

The case was heard by the Divisional Court (Grantham and Bruce, JJ.) on 12th and 13th June, 1899, when the Court gave judgment in favour of the Crown to the full extent of the claim with costs, the duty and costs to be paid out of the fund in Court. It was held that the consideration for the transfer of the 2,500 shares had failed, and that, on the evidence, the validity of the later transfers was not satisfactorily established; these shares were therefore liable to Estate Duty as part of the deceased's estate.

This sub-section therefore did not apply.

This sub-section was held to apply in

Re James F. Lombard (deceased).

The deceased, in consideration of his intended marriage and of certain shares transferred to him by his intended wife, settled lands on himself for life, and after his death for his intended wife absolutely.

An assessment of Estate Duty was made in respect of the lands as passing upon the deceased's death to his wife, who appealed against the assessment, on the ground that an allowance should have been made, under sect. 3 (2) of the Finance Act, 1894, for the value of the shares transferred by her to the deceased as part consideration for the settlement.

The King's Bench Division in Ireland (Palles, C. B., Andrews

and Johnson, JJ.), on the 20th June, 1904, gave judgment in favour of the appellant with costs. The Court held that "partial consideration" in sect. 3 (2) related to contracts in which the consideration was partly marriage and partly money or money's worth, and that the appellant was entitled to the deduction claimed.

4. For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, *or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased*, shall not be aggregated with any other property, but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value thereof; *but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty.*

The words printed in *italics* are repealed by the Finance Act, 1900 (63 & 64 Vict. c. 7), s. 18, and Second Schedule, as respects persons dying on or after the 9th April, 1900.

This section governs the aggregation of property [other than the free estate of the deceased that does not exceed 1,000*l.*, for which see sect. 16 (3)] where the deceased died after the 1st August, 1894, and before the 9th April, 1900.

By aggregation is meant the adding together the values of the various properties (whether settled or not) passing on the deceased's death to ascertain the rate of Estate Duty which each of the items, forming the total aggregate estate, has to pay.

It may be mentioned that there are two classes of property which are exempt or partially exempt from aggregation :—

(a) Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income which the Treasury certify to be of national, scientific, historic, or artistic interest, and exempt from Estate Duty under sect. 20 (1) of the Finance Act, 1896, as extended by sect. 63 of the 1910 Act.

(b) Timber, trees, wood, or underwood growing on the estate of a person dying on or after the 30th April, 1909. (See sect. 9 of the Finance Act, 1912.) The timber, trees, or wood (but not underwood), when sold, pay Estate Duty at the rate applicable to the estate on which they are grown.

The aggregation of property (which does not fall within sect. 16 of the Finance Act, 1894) depends on whether the deceased died in I., II., or III. of the following periods :—

I. After the 1st August, 1894, and before the 9th April, 1900, when the aggregation is governed by sect. 4 of the Finance Act, 1894.

II. On or after the 9th April, 1900, and before the 19th April, 1907, when it is governed by sect. 4 of the Finance Act, 1894, as amended by sect. 12 of the Finance Act, 1900. (See p. 89.)

III. On or after the 19th April, 1907, when it is governed by sect. 4 of the Finance Act, 1894, as amended by sect. 12 of the Finance Act, 1900, and by sect. 16 of the Finance Act, 1907. (See p. 101.)

Each of these periods will therefore be considered separately.

I.

WHERE THE DECEASED DIED AFTER THE 1ST AUGUST, 1894, AND BEFORE THE 9TH APRIL, 1900.

For the purposes of sect. 4 of the Finance Act, 1894, properties may be divided into the following classes :—

(1) Property in which the deceased never had an interest.

(2) Property in which the deceased had an interest under a disposition *not made by the deceased*, and which passes immediately on the death of the deceased—

(a) To some person *other than* the wife or husband or a lineal ancestor or lineal issue of the deceased.

(b) To the wife or husband or lineal ancestor or lineal issue of the deceased.

(3) Property which passes under a disposition *made by the deceased*, no matter to whom it passes.

(4) Property passing, but not under any *disposition*. Property falling under (1) or (2) (a) is not to be aggregated with any other property, but to form an estate by itself, and the Estate Duty is to be levied at the proper graduated rate on the principal value thereof. Properties falling under (2) (b), (3), and (4) are aggregable together to ascertain the rate of Estate Duty.

(1) *As to property in which the deceased never had an interest.*

Examples:—

(a) A. settles Blackacre on B. during the life of the deceased (C.), and on the death of C., to C.'s son D. Blackacre is not aggregable with any other property passing on C.'s death.

(b) Customs Fund policies, because, although the deceased may have the right of nomination, he has no beneficial interest therein himself. Each policy of insurance in the Customs Fund is considered an "estate by itself."

(c) Annuities payable to the widows and children of the ministers of certain religious bodies like the Protestant Union.

(d) Annuities payable to the widows and children of bank clerks under their provident society rules.

It was held in *Att.-Gen.* v. *Watson* (see p. 25) that a mere annuitant had "an interest" in the property out of which the annuity issued within the meaning of sect. 2 (1) (b), such an annuitant would therefore have had an interest for the purposes of sect. 4.

If the deceased had even a contingent interest, it cannot be said that he *never* had an interest, and therefore in the case of an insurance policy taken out by the deceased in the name of his wife, but which contained a proviso that if his wife predeceased him, the policy moneys should be payable to the deceased or his executors, administrators, or assigns, the policy moneys are to be aggregated, although the wife may survive, because the deceased had a contingent interest therein.

In view of the decision in *Robb* v. *Watson*, it would appear that in the absence of evidence to the contrary, the deceased husband has an interest in any policy taken out on his life, in

favour of his wife, under the Married Women's Property Acts, 1870 and 1882, but the exact limitations in each individual policy have to be considered.

In a case where the deceased has sold property to a third person in consideration of an annuity to himself for life, and an annuity to his widow or other person for life, but the transaction is admitted to be a *bonâ fide* purchase, as between the deceased and the purchaser, and the annuities are not charged on the property sold, then, although the annuity payable to the widow or other annuitant is liable to Estate Duty under sect. 2 (1) (d) of the Finance Act, 1894, the value of such annuity forms an estate by itself, since deceased never had an interest therein.

(2) *Property in which the deceased had an interest under a disposition* not *made by the deceased, and which passes immediately on the death of the deceased to* (a) *some person other than the wife or husband or a lineal ancestor or lineal issue, or* (b) *to the wife or husband or lineal ancestor or lineal issue of the deceased.*

Whether the aggregation should depend on the relationship of the beneficiary, living or dead, who becomes entitled on the death of the deceased under the trusts of the *disposition* under which Estate Duty is payable, or on the relationship of the actual *living* person who becomes entitled on the death, although his title may be due to several subsidiary dispositions, is a point not free from doubt, but it has been the official practice to treat the actual *living* person as the one whose consanguinity governs the aggregation.

Examples:—

1. A. settled 1,000*l.* to B. for life (died 1895), and then to B.'s son C. absolutely. C. died in 1890, having settled his reversion by his marriage settlement in favour of his wife D. for life. On the death of B. the 1,000*l.* passes to D. (who is neither spouse, issue, nor ancestor of B.) for life, and is considered not aggregable, and therefore forms an "estate by itself."
2. A. settled Blackacre on B. for life (died 1898), and then to C. (B.'s brother) in fee. C. died in 1890, having by his will devised Blackacre to E. (B.'s son) either for life or absolutely.

   Blackacre is to be aggregated on B.'s death with any other aggregable property.
3. A. settled Whiteacre on B. for life (died 1897), and then in equal shares to B.'s children C., D., E., and F.

C. died in 1890, having left his share to his wife G. This quarter share is an "estate by itself."

D. and E. both die in 1892, having devised their shares to H., a stranger. H.'s share (half) is an "estate by itself."

In this case suppose D. and E. had, instead of dying in 1892, sold their shares in 1895 to H., a stranger, H.'s half share would form one "estate by itself."

F. survived B., and his share is aggregable.

If, in the last example, X. had by the same settlement settled Greenacre on the same trusts, and the four children had dealt with their shares in the same manner, G.'s quarter share of Whiteacre, together with G.'s quarter share of Greenacre, would form an "estate by itself."

H.'s half share of Whiteacre and half share of Greenacre would form together an "estate by itself."

4. A. settled Whiteacre on B. for life (died 1898) and then to C. (stranger to B.) in fee, and by the same deed X. settled Blackacre on the same trusts.

Since C. derives his estates from two settlors, there are considered to be two separate dispositions, and Whiteacre and Blackacre each forms an "estate by itself."

Where a reversioner has sold his interest in expectancy, then on the death of the tenant for life, the assignee stands in the shoes of the assignor for the purpose of aggregation according to *In re Sykes*, County Court of Redhill, 12th April, 1899, decision of Judge Martineau (quoted in Soward, 4th edit. p. 121), but this practice has not been followed by the office; the relationship of the assignee has been treated as the basis of aggregation.

Joint tenants.—The deceased's severable share of property held in joint tenancy is considered to pass under the *disposition* creating the joint tenancy for the purpose of sect. 4 of the Finance Act, 1894 (this is to the advantage of the taxpayer, and therefore will not be cavilled at by the public).

As it is now conceded that joint tenancy property may be considered as "settled property" for the purpose of sect. 16 of the Finance Act, 1894, it would appear that such property may be treated as "settled" for the purpose of sect. 12 (2) of the Finance Act, 1900, and that the title creating the joint tenancy is also the "disposition" for the purpose of that sub-section.

Examples :—

1. A. by indenture of 1st January, 1894 (being a deed of gift), conveyed Blackacre to his three sisters, B., C. and D., as joint tenants. On the death of B. in 1895, one-third passes by survivorship under the joint tenancy created by the indenture of 1st January, 1894, in equal moieties to C. and D., whose interests form two separate estates by themselves.
2. A., the deceased, by indenture of 1st January, 1894, conveyed Blackacre to himself and B., his brother, as joint tenants.

   The property passed on death of A. under a disposition created by A., the *deceased*, and is therefore "*aggregable.*"

(3) *Property which passes under a disposition made by the deceased, no matter to whom it passes.*

This is always to be aggregated with any other aggregable property, and requires no comment. It is considered that subsidiary dispositions by reversioners do not affect the question of aggregation.

(4) *Property passing, but not under any disposition.*

Cesser of dower and curtesy fall under this heading, the property in these cases devolves by the laws of descent and not under any *disposition*, and therefore, whether the heir-at-law to whom the property descends is lineal issue or stranger to the deceased, the property is aggregable in its nature.

But supposing the heir-at-law has predeceased the doweress or tenant by the curtesy, and devised or otherwise disposed of the property to a third person, the property then does pass under a disposition, and the aggregation will depend upon the consanguinity of such third person to the deceased.

Examples :—

1. A. died 1892 intestate, leaving Blackacre, which descended to his brother B. as heir-at-law, subject to the dower of A.'s widow C. in one-third. On C.'s death in 1895, the third of Blackacre is to be aggregated with any other aggregable property passing on C.'s death, because the property does not pass under any disposition, but descends to the heir-at-law.
2. If in the above example B. had died in 1893 and devised Blackacre to his son D., or even had lived and conveyed, after 1st August, 1894, Blackacre gratuitously

or on sale to his son D., then on C.'s death, as the property would pass under a disposition not made by C. to D. (other than her lineal ancestor, lineal issue, or spouse), the one-third of Blackacre would form an "estate by itself."

Property is not to be aggregated more than once on the same death. (See sect. 7 (10).)

Where there is an estate by itself, but a benefit thereout passes to the spouse or lineal ancestor or lineal issue of the deceased.

Supposing Blackacre, valued at 156,000*l.*, passes on the death of the deceased in 1896 under a settlement not made by the deceased to his brother, and so forms an "estate by itself," but a jointure of 500*l.* per annum is payable thereout, as from the deceased's death, to his widow for life, this jointure falls to be aggregated with any other aggregable property passing on the death, and the rates are arrived at in the following manner. Assuming the capital value of so much of the estate as is necessary to produce the annuity to be 11,500*l.*, and the value of the benefit taken by the spouse, viz., the value of the 500*l.* jointure calculated on the widow's life, to be 3,500*l.*, and the value of all other aggregable property passing on the death to be 20,500*l.*

Then Blackacre, 156,000*l.* — 11,500*l.* = 144,500*l.*, and as an estate by itself, pays at 6 per cent. The jointure capital 11,500*l.* pays at the rate ascertained by adding 3,500*l.* (not the 11,500*l.*) to 20,500*l.* = 24,000*l.*, viz., at 4 per cent.

II.

Where the Deceased died on or after the 9th April, 1900, and before the 19th April, 1907.

Sect. 4 of the Finance Act, 1894, as amended by sect. 12 of the Finance Act, 1900 (63 Vict. c. 7), governs the aggregation of property; sect. 12 of the latter Act runs as follows:—

12.—(1) *The exclusion enacted by the proviso to sect. 4 of the Finance Act*, 1894, *of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.*

Provided that where an interest in expectancy (within the meaning of Part I. of the Finance Act, 1894) *in any property has before the passing of this Act been* bonâ fide *sold or mortgaged*

for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) *Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I. of the Finance Act*, 1894, *and such property would, if the disponer had died after the commencement of the said part, have been liable to Estate Duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one-half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.*

Under this section, therefore, property passing on a death is either (1) fully aggregable; (2) not aggregable (this only where the deceased had no interest); or (3) liable to limited aggregation, but subject to the proviso, that where a reversioner has sold or mortgaged his expectant interest, before 9th April, 1900, for full consideration in money or money's worth, the purchaser or mortgagee (the latter only if his mortgage and the duty exhaust the share) pays no other duty than would have been payable if the aggregation were governed by sect. 4, as originally enacted. It is obvious that in many cases the Estate Duty would be less under sect. 12 of the 1900 Act than under sect. 4 of the Finance Act, 1894, but the effect of this proviso is considered to be, to leave the purchaser exactly as he was prior to the Finance Act, 1900, and therefore, although the Estate Duty is larger by applying the principles of aggregation under sect. 4 of the Finance Act, 1894, the purchaser is liable to pay such larger duty. The proviso was evidently inserted so that this section should not in any way prejudice existing contracts. Any sale referred to in the proviso must be after the 1st August, 1894, because if it should be before that date, Estate Duty would not be payable. (See sect. 21 (3) of the Finance Act, 1894.)

(1) *Fully aggregable property.*—All the property liable to Estate Duty on the death (except as to property which falls within sect. 16 of the Finance Act, 1894) is therefore fully

aggregable, unless it can be brought under either of the next two headings.

(2) *Not aggregable property.*—This only applies to property in which the deceased never had an interest. (See notes on p. 85.)

(3) *Property liable to limited aggregation.*—This is a short way of expressing the fact that the rate of Estate Duty on settled property shall not be increased, nor shall the rate on any other property be increased by aggregation therewith, by more than ½ per cent. in excess of the rate at which duty would have been payable, if such settled property had been treated as an estate by itself.

In order to make property liable to such "limited aggregation," three things are necessary :—

(a) The property must be "*settled property.*"

Although it is somewhat doubtful whether properties passing in the cases of cesser of dower, cesser of curtesy, joint tenancy, and joint investment, are strictly "settled" properties, as it has been conceded that the properties may be treated as "settled" for the purpose of sect. 16 of the Finance Act, 1894, it would appear that they may be treated as "settled" for the purpose of sect. 12 (2) of the Finance Act, 1900.

(b) The settlor must have died on or before the 1st August, 1894.

The section, therefore, does not apply to any property settled by a person dying on or after the 2nd August, 1894.

(c) The property must have been liable to Estate Duty on the death of the settlor if he had died after the 1st August, 1894.

This is a most unusual method of taxation; it is obviously often very difficult to say whether certain property is liable to Estate Duty on the death of a person dying at the present time, how much more difficult, then, when the death of the settlor took place sometimes fifty or sixty years ago, and the death has to be brought forward, in imagination only, after the 1st August, 1894.

The extension, by sect. 59 (1), Finance (1909–10) Act, 1910, from one to three years of the time within which an *inter vivos* gift is to be taxed is considered not to affect the operation of sect. 12 (2) of the Finance Act, 1900.

The only event to be projected after the commencement of the Finance Act, 1894, is the date of the death of the settlor. This was decided in

Att.-Gen v. *Thynne.*

By a marriage settlement made in 1864, a sum of money to which the wife was entitled in reversion, subject to the successive life interests of her mother and father, was assigned to trustees in trust to pay an annuity of 300*l.*, which was substantially the whole income to the wife for life and subject thereto income to the husband for life, and after the death of the survivor to stand possessed of the trust fund for such children of the marriage as the husband and wife or the survivor should appoint.

The wife died in 1876. Her mother and father died respectively in 1884 and 1888. The husband died in 1910, and on his death the Crown claimed that for the purpose of ascertaining the rate of the Estate Duty which then became payable the trust fund ought to be aggregated with other property passing on the husband's death in respect of which Estate Duty then became payable.

Held (by Scrutton, J., on 9th December, 1913) that if the wife had died after the commencement of Part I. of the Act of 1894, Estate Duty would then have been payable in respect of the trust fund, because, the deaths of the mother and the father having occurred before that date, the trust fund would have become an interest in possession before the wife's death, and that, therefore, by reason of sect. 12, sub-sect. 2, of the Finance Act, 1900, the claim of the Crown failed.

This case followed *Edgeworth* v. *Inland Revenue Commissioners*, where the same view was held by the Irish Court.

The following examples will assist :—

1. A., who died in 1863, by a voluntary settlement, made within a year of his death, settled 1,000*l.* on B. for life (dies 1902), and then to C. absolutely. The 1,000*l.* is liable to limited aggregation on B.'s death.

   It would seem that if the settlor's death had occurred after the 1st August, 1894, it would not have been within a year of the settlement and so Estate Duty would not have been payable on his death. The limited aggregation is, however, conceded by the office.

2. A., who died in 1863, by a voluntary settlement, made more than a year before, but within three years of his death, settled 1,000*l.* on B. for life (died 1912), and then for C. absolutely. The 1,000*l.* is liable to full aggregation on B.'s death.

3. A., who died in 1863, devised an estate in Jamaica to trustees on trust to sell and proceeds to B. for life (died 1904), and then to B.'s children equally. The proceeds at B.'s death stand invested in English securities in the name of English trustees. They are fully aggregable on B.'s death, because the estate would not have been liable to Estate Duty on A.'s death if after 1st August, 1894.

4. A., by marriage settlement of 1st January, 1862, settles 1,000*l.*, expectant under his parents' marriage settlement, on death of his father, B., who died 1893, on himself for life (dies 1878), then to his wife C. for life (dies 1905), then to his children equally. The 1,000*l.* is liable to limited aggregation on C.'s death, because such sum would have been in possession on A.'s death if he had died after the 1st August, 1894, and therefore liable to Estate Duty on his death.

5. A., by marriage settlement of 3rd May, 1865, settles 1,000*l.* on his wife B. for life (dies 1904), and then to himself for life (dies 1892), and then to their children equally. The 1,000*l.* is fully aggregable on B.'s death, because it would not have been liable to Estate Duty on A.'s death even if he had died after 1st August, 1894.

6. A., by voluntary settlement, settled 1,000*l.* on B. for life (died 1904), and then to her children equally. A. reserved a power of revocation and died 1879. The 1,000*l.* is liable to limited aggregation on B.'s death.

7. A., by settlement of 1854, settled Blackacre to pay 200*l.* per annum to B. during joint lives of A. and B., and subject thereto to A. for life (died prior to 2nd August, 1894). Remainder to B. for life (died on or after 9th April, 1900). Remainder to C. in fee. Blackacre forms one estate liable to limited aggregation (or, if B. dies on or after 19th April, 1907, an estate by itself), and the notional capital to produce the 200*l.* annuity is not separately an aggregable estate because, strictly, the whole of Blackacre would have been liable to Estate Duty on A.'s death if after the 1st August, 1894, and it is only a concession to allow a deduction of the capital to produce the 200*l.* annuity against the Estate Duty claim on A.'s death.

The question of aggregation was raised in *Colquhoun's*

Trustees v. *Colquhoun's Trustees* (see p. 137), but this case throws very little light on the aggregation of settled property in England.

Aggregation on or after 9th April, 1900, and before the 19th April, 1907, where the reversion has been sold or mortgaged after 1st August, 1894, and before 9th April, 1900.

If a share of a settled fund has been sold, between the dates above mentioned, that share is segregated from the rest of the settled funds for the purpose of ascertaining the rate of duty payable on such share, but it must be aggregated with the balance of the settled funds for the purpose of ascertaining the rate payable on such balance. The proviso in sect. 12 (1) is for the protection of a purchaser or mortgagee personally, and in no wise conflicts with the rule, laid down in sect. 12 (1) of the Finance Act, 1900, under which in the case of every person dying after the 9th April, 1900, property is not eliminated from aggregation so as to be an "estate by itself" unless it is property in which the deceased never had an interest.

Example:—

1. John Tompkins (deceased), died September, 1906.

   Free estate ..... 8,000*l.*

   Settled property liable to limited aggregation by sect. 12 (2) of the Finance Act, 1900, passing to deceased's three children, A., B., and C. ..... 2,700*l.*

   In 1897 A. sold his third of the settled fund to a stranger. The purchaser pays Estate Duty on his third at 2 per cent., being the rate he would have paid if the Finance Act, 1900, had not passed. B. and C. pay Estate Duty on the 1,800*l.* at 3½ per cent., that being the rate as limited by sect. 12 (2) appropriate to the whole settled fund of 2,700*l.*, after aggregation with the free estate, 8,000*l.* The executors pay Estate Duty on the free estate at 3½ per cent., such rate being determined in like manner as the rate of duty payable by B. and C. as before mentioned.

2. A., by indenture of 24th June, 1854, settled Blackacre on B. for life (died 1906), remainder to C. for life (died 1912), remainder to D. in fee. In 1899 D. sold his interest to X.

The property is fully aggregable on the death of B., but on the death of C., the purchaser X. can apply to the Estate Duty

Office for a return of the difference between the Estate Duty actually paid and the duty that would have been payable, if the property had been treated as a separate non-aggregable estate on the death of B.

Aggregation as to property over which the deceased had an absolute power of appointment.

(1) Where the power is not exercised and the property passes in default to other than the deceased. The property is treated exactly as it would be under the above rules if no such power existed.

(2) Where the deceased exercises the power by his will.

The property is treated for the purposes of aggregation as part of the deceased's free estate, and therefore fully aggregable therewith. As to aggregation with an estate under 1,000*l.* in value, see notes on p. 257.

Re Augusta E. Magan (deceased).

Elizabeth Georgina Magan by her will, dated 30th April, 1851, left all her property, with the exception of a small annuity, to her daughter, Augusta Elizabeth Magan, for her own use for life, with remainder as she should absolutely appoint, and in default to her absolutely.

When Augusta E. Magan died she was possessed of considerable property in her own right, in addition to that over which she had the power of appointment. She disposed of both properties by her will.

The executors appealed under sect. 10 of the Finance Act, 1894, against the assessment of Estate Duty, on the ground that the property over which the deceased had exercised the power of appointment was "settled property," and should not be aggregated with her own free property for the purpose of ascertaining the rate of Estate Duty.

It was held, on the 18th May, 1908, in the King's Bench Division (Ireland), by Palles, C. B., and Kenny, J., that the two properties should be aggregated, and the appeal was dismissed accordingly.

Annuities arising, passing, or ceasing.

Generally speaking, for aggregation purposes annuities arising on the death of the deceased or passing on the death (where the annuities are not aggregable, but the property out of which they issue is aggregable), or ceasing on the death, are

treated exactly the same as if the proportion of the estate necessary to produce them was an actual estate like Blackacre.

In the case of the cesser of an annuity, even when charged *simpliciter* on real estate, and the claim for Estate Duty arises under sect. 2 (1) (b) of the Finance Act, 1894, in respect of the notional capital required to yield the annuity, such capital is regarded as "settled" property within the meaning of sect. 12 (2) of the Finance Act, 1900, and sect. 16 of the Finance Act, 1907.

Aggregation where the property has been resettled.

If the legal effect of the resettlement is to convey the deceased life tenant's old life estate and to give him in lieu of it another life estate under that instrument, the resettlement is the disposition under which the property passes (see *In re Constable's Settled Estates*) for the purpose of sect. 12 (2) of the Finance Act, 1900, and this is not prevented by saying that the life estate under the resettlement is in restoration and by way of confirmation of the old life estate.

If the resettlement does not confer a new life interest on the deceased, but is made subject to the deceased's life interest, then the passing is under the instrument conferring the life interest on the deceased.

Examples :—

1. A. (died 1892) devised Blackacre to B. for life (died 1906), remainder to C. in tail. By deed of 1897 B. and C. bar the entail and convey the estates to trustees in fee simple to hold in trust for B. for life, in restoration and by way of confirmation of his former life interest, remainder to C. for life, remainder to C.'s first son in tail.

   Blackacre is liable to full and not to limited aggregation on B.'s death under sect 12 (2) of the Finance Act, 1900.

2. A. (died 1891) devised Whiteacre to B. for life (died 1905), remainder to C. in tail. By deed of 1898 B. and C. bar the entail and resettle Whiteacre (subject to B.'s life interest) in trust for C. for life, remainder to C.'s first son in tail.

   Whiteacre is liable to limited aggregation on B.'s death under sect. 12 (2) of the Finance Act, 1900.

The results would be the same if the deceased's interest had been an annuity.

Several items of property settled at different times by the SAME disponer.

It has been shown that the original instrument giving the deceased his life interest is the disposition to consider for the purposes of sect. 12 (2) of the Finance Act, 1900. Further, if the original disponer makes several dispositions at various dates and of different properties on the same tenant for life, then on the death of such tenant for life the values of these different properties are not to be added together to find the one estate liable to limited aggregation, but each is to be taken for the purpose of the limited aggregation as a separate unit. Where the death is on or after the 19th April, 1907, each is an estate by itself.

Example:—

(a) A., by settlement of 1876, settled 2,000*l.* on himself for life (died 1892), and then to B. for life (died 1906), and then to B.'s children.

(b) A., also by settlement of 1880, settled Blackacre, valued at 18,000*l.*, on the same trusts.

(c) A. by his will devised Whiteacre, valued at 20,000*l.*, to B. for life, remainder to B.'s widow for life, remainder to their children equally.

On the death of B., the values of the 2,000*l.*, Blackacre, and Whiteacre are not to be added together to find the property derived from A. liable to limited aggregation, but the 2,000*l.* forms a separate unit, and is liable to Estate Duty at 3½ per cent., and Blackacre and Whiteacre each forms another unit, and is liable at 4½ per cent.

If B. died on or after the 19th April, 1907, the three items would each form a separate non-aggregable estate (see sect. 16 of the Finance Act, 1907), and the rates would be:—If the death is before 30th April, 1909, as to (a), 3 per cent.; as to (b) and (c), 4 per cent. (see sect. 12 of the Finance Act, 1907); and if the death is on or after 30th April, 1909, as to (a), 3 per cent.; as to (b) and (c), 5 per cent. (see sect. 54 of the Finance (1909–10) Act, 1910).

Aggregation of accumulations.

Where a testator who died before the 2nd August, 1894, directs his real estate to be accumulated for twenty-one years, and then devises such property and the accumulations to a person (dying after the 8th April, 1900, and before the 19th April, 1907) for life with remainders over, on the death of such

life tenant after the expiration of the term of twenty-one years, Estate Duty is payable on the property and accumulations. The property and the accumulations are considered to be liable to limited aggregation.

This case is given, because when the first edition of this book was published, it was considered that the accumulations could be treated separately from the property which produced them, and that they were liable to full aggregation; but now see pp. 114 and 115 for the reasons against that view.

Aggregation of entailed property.

Where the deceased tenant in tail is succeeded by his heir of entail belonging to the same "stirps" as the deceased, it is considered that the real estate does not pass under any settlement, but simply devolves by descent according to the ordinary rules of law affecting tenancies in tail, therefore the provisions of sect. 12 (2) of the Finance Act, 1900, do not apply, and the property is fully aggregable.

If the "stirps," to which the deceased belonged, fails, and it is necessary to refer to the settlement to ascertain the new "stirps" to which the succeeding tenant in tail belongs, it is conceded that the property is "settled," and the provisions of section 12 (2) of the Finance Act, 1900, may apply.

Example :—

Blackacre is limited by the will of A. (died 1893) to B. for life (died 1895), remainder to B.'s first, second, &c., sons in order of seniority in tail. B. leaves three sons, C., D., and E.

C. dies in 1902, leaving two sons, F. and G., and the son F. succeeds him as tenant in tail. Blackacre is fully aggregable on C.'s death.

F. dies in 1903 without issue, and is succeeded by G. of the same "stirps." Blackacre is fully aggregable on F.'s death.

G. dies in 1906 without issue, and D., a new "stirps," succeeds. Blackacre is liable to limited aggregation on G.'s death.

Aggregation, where the property passes on deceased's death under a settlement, to a person for life (who survives) and subject thereto, to the deceased absolutely.

If a claim for Estate Duty arises on the deceased's death under the settlement, it is considered that the aggregation is fixed thereby, and that it is not permissible, when paying Estate

Duty under the settlement, to dissect the settled property, for the purposes of aggregation into two parts: (a) the value of the life interest of the succeeding life tenant, and (b) the value of the deceased's reversion expectant on the death of such life tenant, although the rate on the free estate may be increased by the aggregation of the reversion therewith.

Examples:—

1. A., by voluntary settlement in 1872, settled 9,000*l.* on himself for life (died 1876), remainder to his wife B. for life (died 1899), remainder to his sister C. for life (living), remainder to B. absolutely. B. left free estate in possession, valued at 8,000*l.* net. It is considered that Estate Duty is payable at 3 per cent. on the 9,000*l.*, forming an estate by itself under sect. 4 of the Finance Act, 1894, and that Estate Duty is payable on the 8,000*l.*, at 4 per cent., because such 8,000*l.*, with B.'s reversion in the sum of 9,000*l.* together, are over the value of 10,000*l.* (See sect. 17 of the Finance Act, 1894.)
2. Supposing in the above example B. died on or after the 30th April, 1909 (the rates are fixed by sect. 54 of the 1910 Act, and the aggregation by sect. 16 of the 1907 Act, because the death is after 19th April, 1907). The 9,000*l.* forms an estate by itself, and is liable to Estate Duty at 4 per cent., and the 8,000*l.* at 5 per cent.

The decision of the Court of Appeal in *Re Avery, Pinsent* v. *Avery* (in which the Crown was not represented) makes the determination of the aggregation in cases like the above a matter of great doubt, and possibly if the parties interested tendered Estate Duty on the value of the succeeding life interest and the reversion separately, treating the reversion for aggregation and Estate Duty purposes as part of the deceased's free estate, the duty would be so accepted provided the Revenue did not suffer.

Aggregation of property where no Estate Duty is payable.

Speaking generally, property passing on a death is not to be aggregated unless Estate Duty is *chargeable* thereon, but property may have to be aggregated although no Estate Duty is actually *payable*. The following two cases appear to be the only examples of the latter:—

(1) Where the deceased left property in a British possession

and the Colonial Death Duty to be allowed under sect. 20 (1) of the Finance Act, 1894, equals or exceeds the Estate Duty thereon, so that in the result no Estate Duty is actually payable.

Example :—

The deceased died in 1903 domiciled in England possessed of 1,000*l.*, and also left 30,000*l.* in the Barbadoes (where the Colonial Death Duty is equal to the Estate Duty). The 1,000*l.* pays Estate Duty at the rate of 4½ per cent.

(2) Where an allowance falls to be made under sect. 21 of the Finance Act, 1896, which equals or exceeds the Estate Duty on the settled property.

Example :—

A. settled 400*l.* on himself for life (died 1893), and then to his son B. for life (died 1906), and then to his grandson C. absolutely. Succession Duty was paid at 1½ per cent. on the capital in 1893 = 6*l.* The only other property passing on B.'s death is his free estate valued at 9,800*l.*, which is liable to Estate Duty at 3½ per cent.

The Estate Duty on the 400*l.* = 6*l.* is balanced by the sect. 21 allowance of 6*l.*, so that no duty is actually payable thereon.

Aggregation of property accruing under sect. 33 *of the Wills Act* (1 *Vict. c.* 26).

The value of property accruing, by virtue of sect. 33 of the Wills Act, to the estate of a deceased person, by the subsequent death of a surviving ancestor, is the value at the date of such ancestor's death, unless the gift is preceded by a life interest to some other person, when the value for Estate Duty is its reversionary value at the ancestor's death, after deducting the life interest, but in the latter case payment of Estate Duty may be postponed until the reversion falls into possession, when, of course, Estate Duty will be payable on its value in possession.

Example :—

A. dies in 1900, leaving property worth 1,200*l.*, and Estate Duty is paid thereon at 3 per cent.

B. dies in 1903, leaving 10,000*l.* to his son A., whose estate is entitled thereto under sect. 33 of the Wills Act. The 10,000*l.* pays Estate Duty at 4 per cent. as part

of A.'s estate, and an additional 1 per cent. becomes payable on the said 1,200*l.*

III.

WHERE THE DECEASED DIED ON OR AFTER THE 19TH APRIL, 1907.

Sect. 4 of the Finance Act, 1894, as amended by sect. 12 of the Finance Act, 1900, and by sect. 16 of the Finance Act, 1907 (7 Edw. 7, c. 13), governs the aggregation of property. Sect. 16 of the Finance Act, 1907, runs as follows:—

16. *In the case of persons dying on or after the 19th day of April*, 1907, *any settled property which would, under sub-sect.* (2) *of sect.* 12 *of the Finance Act*, 1900, *be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.*

It will be observed that the limited aggregation introduced by the Finance Act, 1900, is abolished, and property is now either (1) fully aggregable or (2) non-aggregable.

(1) *Fully aggregable property.*—All the property liable to Estate Duty on the death (except as to property which falls within sect. 16 of the Finance Act, 1894) is liable to full aggregation, unless it can be brought under the next heading.

(2) *Non-aggregable property.*—This now consists of (a) property in which the deceased never had any interest; (b) property which would have been liable to limited aggregation under sect. 12 of the Finance Act, 1900 (63 & 64 Vict. c. 7). (See p. 91 for particulars.)

The proviso in sub-sect. 1 of sect. 12 of the Finance Act, 1900, is not repealed; it therefore follows that property that has been sold or mortgaged to its full extent between the 1st August, 1894, and the 9th April, 1900, may still fall to be aggregated or not, according to the conditions laid down in sect. 4 of the Finance Act, 1894, as originally enacted.

The notes under heading II. on p. 95 as to property subject to an absolute power of appointment; on p. 96 as to property that has been resettled; on p. 97 as to several properties settled by the same disponer at different times; on p. 97 as to accumulations; on p. 98 where deceased is life tenant and reversioner; and on p. 100 as to property accruing under sect. 33 of the Wills

Act (1 Vict. c. 26), will apply equally where the deceased died on or after the 19th April, 1907, subject, of course, to the altered conditions imposed by sect. 16 of the Finance Act, 1907.

5.—(1) Where property in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

(a) a further Estate Duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(b) during the continuance of the settlement the Settlement Estate Duty shall not be payable more than once.

See separate chapter on Settlement Estate Duty, Chapter II.

This sub-section imposes a new duty, called Settlement Estate Duty, at the rate of 1 per cent. (increased to 2 per cent. by sect 54 of the Finance (1909–10) Act, 1910, where the deceased dies on or after the 30th April, 1909), on settled property to counterbalance the advantages such property enjoys, by being free from Estate Duty and the duties in the First Schedule to the Finance Act, 1894, during the continuance of the settlement.

Settlement Estate Duty is not payable in the case of persons dying after the 11th May, 1914 (see sect. 14 of the Finance Act, 1914), and this sub-section was repealed by sect. 18 (1) of that Act.

"**In respect of which Estate Duty is leviable.**"—Settlement Estate Duty is not payable unless Estate Duty is also payable.

"**Settled.**"—See sect. 22 (1) (h) and (i), p. 303.

"**By the will of the deceased or having been settled by some other disposition passes under that disposition to some person not competent to dispose of the property.**"

It is the official practice not to claim Settlement Estate Duty

under the will of the deceased, if the property passes to some person competent to dispose thereof, although Buckley, J., in *Re Palmer, Palmer* v. *Rose-Innes* (1900), W. N. 9, seems to have been of opinion that Settlement Estate Duty can be claimed, even where a legatee takes for life with a general power of appointment superadded. Settlement Estate Duty is not payable under a disposition that took effect on or before the 1st August, 1894. (See sect. 21 (4).)

The Settlement Estate Duty was considered to attach to property which was deemed, by virtue of sect. 2 (1), to pass on the death, provided, of course, the other conditions necessary to attract the duty were present, but the House of Lords held in *Att.-Gen.* v. *Milne* that Settlement Estate Duty was not payable.

"**A further Estate Duty called Settlement Estate Duty.**"—In *Re Webber, Gribble* v. *Webber*, Mr. Justice North said: "Is Settlement Estate Duty the same as Estate Duty? It seems to me that '*Estate Duty*' covers it. If this is not so, there is no provision in the Act as to the payment of the Settlement Estate Duty."

"**Principal value of the settled property.**"—The value for Settlement Estate Duty is the value at the death of the person on whose decease the claim for Settlement Estate Duty arises.

"**Rate hereinafter specified.**"—The rate of Settlement Estate Duty is at 1 per cent. (See sect. 17.) The rate was increased to 2 per cent. by sect. 54 of the Finance (1909–10) Act, 1910.

"**Except, &c.**"—Settlement Estate Duty is not payable where the only life interest in the property, after the death of the deceased, is that of the deceased's spouse, but if there is a life interest to a third person after the death of the deceased's spouse, the Settlement Estate Duty is at once payable, and is not to be postponed until after the death of the spouse.

"**During the continuance of the settlement the Settlement Estate Duty shall not be payable more than once.**"

It will be observed that the exemption is a much wider one than the exemption from Estate Duty under sect. 5 (2), and applies, notwithstanding there may be a death of a person competent to dispose, if the settlement continues.

Example:—

A. by will devises Blackacre to B. for life, remainder to C. for life, remainder as C. should by will appoint, in default to D. in fee. Estate Duty and Settlement

Estate Duty are paid on the death of A. C. by his will appoints to E. for life, remainder to F. in fee.

Estate Duty, but not Settlement Estate Duty, is payable on the death of C., because C.'s will exercising the power must be read into A.'s will creating the power, and together they make one settlement.

(2) If Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property, *and who if on his death subsequent limitations under the settlement take effect in respect of such property was* sui juris *at the time of his death or had been* sui juris *at any time while so competent to dispose of the property.*

The words in italics were added by sect. 13 of the Finance Act, 1898.

This sub-section was amended by sect. 55 of the Finance (1909–10) Act, 1910, in the case of persons dying on or after the 30th April, 1909, but so as not to affect the rights of mortgagees or purchasers whose interests arose prior to that date. (See sect. 64 of that Act.)

The sub-section will be considered under the Finance Act, 1894, and the effect of the amendment under the Finance (1909–10) Act, 1910.

The relief from a further Estate Duty was entirely abolished by sect. 14 of the Finance Act, 1914, in the case of any person dying after the 15th August, 1914, except where the two deceased persons had been parties to a marriage.

The effect of this sub-section is, that once Estate Duty has been paid on property under a settlement, no further claim for Estate Duty can arise on such property until the death of a person who, being *sui juris*, is, or has been, competent to dispose thereof during the continuance of the settlement.

"**Settled property.**"—See definition in sect. 22 (1) (h). Settled property means "property comprised in a settlement."

The question which is the settlement under which the property passes on a death therefore is, obviously, very important, and has received judicial construction in two or three cases, but none of the cases have involved the consideration of strict settlements of real estate.

Att.-Gen. v. *Hay and others.*

By a marriage settlement, in 1855, a sum of money was settled in trust for E. A. for life, and on her death to her children in equal shares. J. H. A. was one of the children. In 1888 J. H. A. on his marriage settled his share of the funds on himself for life, then on his wife for life, then to his children as therein mentioned. E. A. died on 4th December, 1894, and Estate Duty was paid under the 1855 settlement.

J. H. A. died 20th February, 1897, and Estate Duty was claimed under the 1888 settlement.

The parties (trustees of the 1888 settlement) pleaded that sect. 5 (2) precluded this claim.

Held (by Grantham and Kennedy, JJ.) the claim was good. Kennedy, J., said, "the settlement" in sect. 5 (2) must mean the settlement under which J. H. A. got his benefit, viz., the 1855 settlement. The 1888 settlement was the deed by which he parted with his interest, and showed he had been competent to dispose.

Commissioners of Inland Revenue v. *Priestley and another, In re Studdert.*

[Decision of Lords Halsbury, Macnaghten, Morris, Shand, Davey, Brampton, Robertson, and Lindley.]

By a marriage settlement, dated the 7th October, 1861, on the marriage of the Rev. George Studdert and Caroline Amelia Priestley, the wife settled funds (valued at her death at 3,564*l.* 3*s.* 4*d.*) in trust for her said husband for life (died 14th April, 1897), then for herself for life (died 19th March, 1897), and after the death of the survivor, in default of children (which happened), as the wife should absolutely by deed or will appoint, in default to Mrs. Studdert's next of kin. Mrs. Studdert exercised this power by her will proved 2nd August, 1897. On her death Estate Duty was paid on the reversionary value of the funds, viz., on 3,150*l.* 6*s.* 4*d.*, ascertained by deducting 413*l.* 17*s.*, the value of Mr. Studdert's life interest in the funds, from the sum of 3,564*l* 3*s.* 4*d.*

Estate Duty was claimed again on the said funds on the death of Mr. Studdert.

It was held by the House of Lords (affirming the judgment of the Irish Courts of Appeal and Queen's Bench) that the Estate Duty paid on the death of the wife was in respect of "settled property" within the meaning of sect. 5 (2) of the Finance Act, 1894, and that no further Estate Duty was payable on the death of the husband.

Held also no duty was payable on the sum of 413*l.* 17*s.* deducted in respect of the value of the husband's life interest, approving the judgment of Rigby, L. J., in *Att.-Gen.* v. *Dodington.*

Lord Davey, in the course of his judgment, said: "If the power is not exercised, I do not see very well in what sense the property which would have devolved on the persons entitled under the settlement (in this case the next of kin of Mrs. Studdert) could be deemed to pass on the death of the person who had the power, but had not in fact exercised it."

This is *obiter dicta*, but is now followed. (See under sect. 5 (3) of the Finance Act, 1894.)

The case of *Commissioners of Inland Revenue* v. *Priestley*, under sect. 5 (2), is analogous to *Att.-Gen.* v. *Dodington*, under sect. 21 (1), and in both cases it was the payment of duty, in the first case Estate Duty, and in the latter Probate Duty, under the exercise of an absolute power of appointment over the reversion, which was held to discharge the claim for Estate Duty on the death of the tenant for life.

In actual practice it is conceded that the result would be the same if, in the above case, Mrs. Studdert had an absolute reversion, and not a power of appointment only over such reversion.

Example:—

A. settled 1,000*l.* to B. for life (died 1905), and then to C. absolutely. C. died in 1900, and Estate Duty was then paid on the value of C.'s reversion. This payment is held to discharge the claim for Estate Duty that would otherwise have arisen on the death of B.

If, in this example, B. died on or after the 30th April, 1909, the limitation in sect. 55 of the Finance (1909–10) Act, 1910, would apply, and the payment of Estate Duty on C.'s reversion would not prevent Estate Duty becoming payable on B.'s death.

The payment of Estate Duty on the reversion must be on the

full value thereof, without deduction of any mortgage thereon or of any debts, because if these are deducted, the reversion has, to a certain extent, escaped from the payment of Estate Duty, and to this extent the Estate Duty on the death of the life tenant is payable. For an example of how this proportion is arrived at, see the example under sect. 21 (1), pp. 287 and 288, the principle being the same.

This is borne out by the following case :—

Lord Advocate v. *Mackenzie's Trustees.*

By his will, Dr. Mackenzie (who died before the 2nd August, 1894) devised his freehold premises, No. 1, Oakfield Terrace, to his widow for life, and then to his son, W. J. Mackenzie, in fee. He also devised and bequeathed on the same trusts half of his residuary estate (the half being valued at 22,000*l.*), of which only about 750*l.* was heritable, and did not pay Inventory Duty. The son predeceased the widow, and died in February, 1901. During the son's lifetime, in connection with certain divorce proceedings between himself and his wife, he assigned to trustees for her one-half of his interest in the residuary estate, and he borrowed considerable sums of money on the security of the balance.

In the inventory and relative accounts of W. J. Mackenzie's estate, the value of the Oakfield Terrace house and his interest in the said residuary estate were included, deduction being taken for the value of the widow's life rent. Deduction was also taken for the half of his interest in the said residue assigned to the trustees for his wife, and for the sums borrowed on his remaining interest therein; the result being to show that, under these deductions, his interest in the residue was more than exhausted, and that there was a deficiency of 99*l.*, which was set against the value of the Oakfield Terrace house. Accordingly, Estate Duty was paid on the son's inventory on a part only of the value of his reversionary interest in the house, and not on any part of the value of his interest in the residue.

The testator's widow died in September, 1902, and Estate Duty was claimed by the Crown on so much of the residue as was heritable and had not borne Inventory Duty, and Legacy Duty at 1 per cent. was claimed on so much of it as was moveable. Estate Duty was also claimed on the value of No. 1, Oakfield Terrace, to the extent to which such claim was not satisfied by the payment of Estate Duty on the son's inventory.

The defenders pleaded that the way in which the son's interest in the house and residue had been accounted for in his own inventory was equivalent to actual payment of Estate Duty by his death, and that sect. 5 (2) of the Finance Act, 1894, applied.

For the Revenue, it was contended that, by anticipating his interest as he had done, the son could not defeat the Crown's claim for duty in respect of the property on the death of the testator's widow, and that sect. 5 (2) could only apply to the extent to which there had been an actual payment of Estate Duty on the son's inventory.

The Lord Ordinary, in Scotland, on 1st March, 1905, upheld the Crown's contention.

In order to escape the payment of a further Estate Duty there must have been a payment of Estate Duty in respect of "settled property." See

Lord Advocate v. *Harvey's Trustees.*

On the 23rd December, 1853, Dr. Thomas Harvey and his wife, Rebecca, executed a post-nuptial contract, which included a conveyance by the wife to the trustees of all property to which she might acquire right during the marriage. The property was to be held in trust for the wife for life, and then for the children of the marriage.

Barnett Harvey (brother of the wife) died on the 14th February, 1897, and devised and bequeathed to her absolutely a share of his real and personal estate. Rebecca Harvey died on the 25th September, 1899, and Estate Duty was then claimed in respect of the said share as passing by her death under her post-nuptial settlement.

The claim was resisted on the ground that the case fell within the provisions of sect. 5 (2) of the Finance Act, 1894, and that the payment of Estate Duty on the said sum, as part of Barnett Harvey's free estate, covered the Estate Duty thereon under the post-nuptial settlement.

The First Division of the Court of Session (affirming the judgment of Lord Stormonth-Darling) held, on the 29th October, 1901, that the Estate Duty paid by B. Harvey's estate was duty on an estate which vested in the legatees absolutely as unsettled estate, that no duty had been paid in respect of the wife's legacy as "*settled property*," and that the Estate Duty was therefore payable on Rebecca Harvey's death.

But if in the above case B. Harvey had bequeathed a share

of his estate to A. (who died, say, in 1898) for life, and then to Rebecca Harvey absolutely, then Estate Duty would have been paid on B. Harvey's death in respect of "*settled property*," and since the date of the settlement of 23rd December, 1853, and it is therefore, in practice, conceded that there can be no claim for Estate Duty in similar circumstances on the death of Rebecca Harvey.

Again, supposing A. (died 1872) devised Blackacre to B. for life (died 1895), and Estate Duty is paid on Blackacre, remainder to C. in fee. C. died in 1890, and devised Blackacre to D. for life (died 1903), remainder to E. in fee. As there was a payment of Estate Duty on the death of B., in respect of "settled property," there can be no claim for Estate Duty on the death of D. (unless he dies after the 15th August, 1914), who was not and never had been competent to dispose of Blackacre since A.'s death, when his will took effect.

This sub-section, by virtue of sect. 22 (3), applies to property in which the wife or husband of the deceased [= a person dying after 1st August, 1894 (sect. 22 (1) (a)] takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Examples :—

1. A. dies in 1895 intestate, leaving a widow B. entitled to dower in Blackacre, and his son C. his heir-at-law. Estate Duty is paid on the death of A., on the value of Blackacre, and B. pays interest on a proportion (viz., one-third) of the duty during her life, in accordance with the rule laid down in *Re Parker-Jervis, Salt* v. *Locker*. On B.'s death no further Estate Duty is payable by C., nor is any Succession Duty under the Succession Duty Act, 1853, payable.
2. A. dies in 1896 intestate, leaving her husband B. tenant by the curtesy of Blackacre, and C. her son and heir-at-law. Estate Duty is paid on A.'s death, and no further Estate Duty nor Succession Duty, under the Succession Duty Act, 1853, is payable on B.'s death by C.
3. A. dies in 1892 intestate, leaving a widow B. entitled to dower in Blackacre, and C. his son and heir-at-law. C. dies in 1895, having devised Blackacre to D., and Estate Duty is paid by D. on the value of Blackacre, less one-third in respect of B.'s dower.

   B. died in 1903. When the first edition of this

book was written it was the practice of the office to claim Estate Duty on the death of B. on the cesser of her dower interest in one-third of Blackacre, and also to claim Estate Duty on the death of C. in respect of the accretion of the one-third to C.'s estate when B. died (unless the value only of the dower was deducted on C.'s death), because it was considered that (a) sect. 22 (3) of the Finance Act, 1894, did not apply, since B. was not the widow of a person dying after the 1st August, 1894, and that (b) sect. 5 (2) did not apply, because there was no "settled" property in question. Having regard, however, to the opening words of sect. 22 (1), "unless the context otherwise requires," it is now conceded that the cesser of dower and curtesy may be treated as "settled" property whensoever the intestate died, therefore only one Estate Duty is now payable, viz., on the accretion of the one-third to C.'s estate. Of course, if B. died on or after 30th April, 1909, the two Estate Duties would be payable, because of sect. 55 of the 1910 Act.

4. A. dies in 1892 intestate, leaving a husband B. entitled to a life interest by curtesy in Blackacre, subject to which their son C. takes as heir-at-law.

C. dies in 1895, having devised Blackacre to D., who pays Estate Duty on Blackacre, less the value only of B.'s life interest.

B. dies in 1903. Estate Duty is not again payable by D., for the reasons given in Example No. 3; but if B. died on or after 30th April, 1909, Estate Duty would be payable on the cesser of B.'s curtesy interest, notwithstanding the value only was deducted on the death of C.

This sub-section does not apply if there is no "*settled property*," therefore the principle of the *Studdert case* cannot be applied in cases of gifts with a reservation or gifts out and out, within twelve months of the donor's death.

Example:—

A. gives 1,000*l.* to B. in consideration of B. paying A. 30*l.* per annum for life.

B. dies in 1905, and Estate Duty is paid on the 1,000*l.*, less the value of the 30*l.* annuity for A.'s life.

A. dies in 1906. Estate Duty is payable on the 1,000*l.* as a

gift with a reservation, and there being no "settled property," the payment of Estate Duty on B.'s death does not affect this claim.

"Nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act be payable."

These duties are the 1 per cent. Legacy and Succession Duties under the Stamp Act, 1815, and the Succession Duty Act, 1853, payable by lineals; they must not be confused with the new 1 per cent. Legacy and Succession Duties under sect. 58 (2) of the 1910 Act.

These duties do not in terms include the additional rates of ½ and 1½ imposed by the Customs and Inland Revenue Act, 1888, s. 21, nor the Temporary or Goschen Estate Duty under the Customs and Inland Revenue Act, 1889, s. 6 (in the case of a death happening before the 1st June, 1896), but it is the official practice not to claim them under such circumstances that, if the Succession Duty had been at 1 per cent., it would not be payable by virtue of this sub-section.

It may be observed that the statement of value for the purposes of Temporary Estate Duty under the Customs and Inland Revenue Act, 1889, was only to be delivered with the succession account, and therefore it follows that the exemption from 1 per cent. Succession Duty carries with it in such cases the exemption from the Temporary Estate Duty.

Notwithstanding a payment of Estate Duty on settled property, since the date of the settlement, it would appear doubtful whether such property is exempted by this sub-section at the death of a subsequent tenant for life under the settlement, from the duties mentioned in the first four paragraphs of the First Schedule to the Act. This sub-section in terms only exempts such property from the duties mentioned in the fifth paragraph, but the point is not free from doubt, and the Inland Revenue authorities take the broader and more equitable view that neither the higher rates of Succession Duty nor Temporary Estate Duty are payable under such circumstances.

Examples:—

1. A., who died in September, 1894, devised Blackacre, worth 20,000*l.*, to his son B. for life (dies May, 1896), remainder to C. (A.'s grandson) in fee.

   The Estate Duty paid on A.'s death exempts C. from both Succession Duty at 1 or 1½ per cent. and from Temporary Estate Duty.

2. A., who died in September, 1894, devised Blackacre, worth

20,000*l.*, to his brother B. for life (dies May, 1896), remainder to C. (A.'s nephew) in fee.

The Estate Duty paid on A.'s death exempts B. from the additional 1½ per cent. Succession Duty and 1 per cent. Temporary Estate Duty by virtue of sect 1. Sect. 5 (2) is considered to exempt C. from these duties whether Blackacre actually passes on B.'s death or even if B. has surrendered his life interest.

3. A., who died in 1895, devises Blackacre to his daughter B. for life, remainder as she should absolutely by deed or will appoint, in default to her children equally. B. has one son C. In 1897 B. releases her absolute power of appointment and surrenders her life interest to C., and dies in 1904.

Estate Duty is paid on A.'s death. No Estate Duty is payable on B.'s death as the property does not pass, but Succession Duty is payable by C. at 1½ per cent., B. having been competent to dispose.

"**Until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.**"

If the deceased is competent to dispose at the time of his death the case presents no difficulty, and Estate Duty is payable under sect. 2 (1) (a).

But if the deceased is not competent to dispose at his death, but once had been, then some difficulty may occur in ascertaining which is the settlement referred to in the sub-section under which the Estate Duty has already been paid.

The following examples present no such difficulty :—

1. Property is settled on A. for life (Estate Duty is paid on his death), with remainder to B. for life, remainder as B. should absolutely by deed appoint, in default to C. B. releases his absolute power of appointment, and dies after A. Estate Duty is again payable on B.'s death, because he has been competent to dispose.
2. Property is settled on A. for life (Estate Duty is paid on his death), remainder to B. for life, and then as B. should absolutely by will only (not by deed) appoint, in default to C. B. releases his power to appoint, and dies after A. Since B. was never competent to dispose during his lifetime, and was not competent to dispose at his death, Estate Duty is not payable on B.'s death

unless it happens after the 15th August, 1914. (See sect. 14 of the Finance Act, 1914.)

3. Property is settled on A. for life (dies 1896), remainder to B. in fee. B. survives A. and settles the property (during A.'s lifetime) on himself for life, remainder to C. in fee. Estate Duty is payable both on A.'s and B.'s death. (*Att.-Gen.* v. *Hay.*)

The following case presents more difficulty:—

4. By settlement of 8th January, 1872, Blackacre is settled on A. for life (dies 1895), remainder to B. in tail. A. and B. in 1893 bar the entail, and together convey and resettle Blackacre to A. for life in restoration of his former life estate, remainder to B. for life (dies 1901), remainder to C. in tail.

The Estate Duty payable on A.'s death is at the present time considered to be payable under the 1893 resettlement (under which A. holds his life estate at his death), and therefore Estate Duty is not again payable on B.'s death.

This follows the view of the Law Officers for the Crown in 1897. (See p. 94 of Soward's "Estate Duty," 4th edit.) No distinction is made in the above case, whether the resettlement is subject to A.'s life interest, or a life estate is limited to A. by the resettlement, in restoration of his former life estate.

5. By settlement of 1st February, 1873, Blackacre is settled on A. for life (died 1892), remainder to pay his widow B. a jointure of 500*l.* per annum for her life (dies 1902), and subject thereto to C. in tail. By resettlement of 1893, C. settles Blackacre, subject to said jointure, on himself for life (dies 1904), remainder to D. in tail.

The Estate Duty payable on the cesser of B.'s jointure is considered to be payable under the resettlement of 1893, and therefore on C.'s death the sum which pays Estate Duty on B.'s death is a good deduction against the value of Blackacre. If B. died after the 15th August, 1914, it would not be a good deduction.

That is to say, that annuities issuing out of property settled in strict settlement are treated in the same manner as they would be if a specific part of the estate were settled on the annuitant instead of the annuity.

"**And who if on his death**," &c.—These words were added by sect. 13 of the Finance Act, 1898, and since that Act directs that the principal Act "shall be read and have effect" as if these words had been added, they are seemingly retrospective.

They prevent Estate Duty being payable on the death (prior to the 16th August, 1914) of an infant tenant in tail, if subsequent limitations under the settlement take effect, when Estate Duty has already been paid under the settlement on a prior death.

A similar exemption would be conferred on the death of a lunatic, unless he had been sane during the continuance of the settlement.

Covenant debts, and sect. 5 (2).

If a person covenants, by his own or his child's marriage settlement, that his executors or administrators should pay a sum to the trustees of such settlement six months after the covenantor's death, to be held on the trust declared by the marriage settlement, no deduction can be taken in respect thereof against the covenantor's estate, and therefore the sum payable is liable (as part of the covenantor's estate) to Estate Duty, although, as a fact, the Estate Duty on such sum is payable out of the covenantor's residuary estate. (See *In re Gray, Gray* v. *Gray*.)

On the death of a tenant for life under such settlement (after the death of the covenantor), Estate Duty is not payable on the covenanted sum, as this sub-section is considered to apply except where the life tenant's death is after the 15th August, 1914.

Example :—

A. covenanted in his daughter's marriage settlement that his executors or administrators should pay 10,000*l.* within six months after his death (died 1896) to the trustees of such settlement, to be held in trust for his daughter B. for life (died 1905), and then for her husband C. for life, and then for the children of the marriage. No deduction is taken against A.'s estate on his death in respect of such sum.

On B.'s death no further Estate Duty is payable.

Property which has paid Estate Duty directed to be accumulated.

It is considered that, where settled property with accumulations of income therefrom passes by reason of a death and the

corpus of the settled property is exempted from Estate Duty by sect. 5 (2) or sect. 21 (1) of the Finance Act, 1894, because Estate Duty, or Probate Duty, or Account Stamp Duty has already been paid on such *corpus*, the exemption afforded by these sections should be regarded as extending to the accumulations of income from such settled property, unless the deceased was at the time of his death, or had been during the continuance of the settlement (see sect. 5 (2)), or since the will or disposition took effect (see sect. 21 (1)), competent to dispose of such accumulations.

The remarks of Rigby, L. J., in *Att.-Gen.* v. *Dodington*, [1897] 2 Q. B. 373, at p. 383, approved by the House of Lords in *Commissioners of Inland Revenue* v. *Priestley*, [1901] A. C. 208, are against the view that the accumulations are a distinct and separate property from the *corpus* producing them.

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

It is thought that the true construction of this sub-section is that, where the only interest of the deceased in settled property is a future one, and it fails or determines before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death because of such failure. Therefore, (1) if the property actually passes under sect. 1 of the Finance Act, 1894, or (2) falls within any of the categories in sect. 2 (1) of the said Act, for instance, (a) deceased is competent to dispose, (b) an actual interest of a third person (not the deceased) in possession ceases, and (c) deceased made a voluntary settlement within three years of his death, Estate Duty may be payable, notwithstanding that in each case there was also a future interest of the deceased which failed or determined before it became an interest in possession.

Examples :—

1. A., in 1878, on marriage of her son B. to C., settled 1,000*l.* on trust for C. for joint lives of B. and C., and on death of C., to B. for life, and on death of B. in

lifetime of C. (happened) to B.'s children in equal shares. B. died in 1912, leaving C. and children surviving. It is thought Estate Duty is payable on B.'s death notwithstanding the failure of B.'s life interest before it became an interest in possession.

2. Property is settled on A. for life, remainder to B. for life. Remainder as B. should absolutely appoint. In default to C. in fee. B. dies in the lifetime of A. without appointing. It is thought this sub-section does not apply and that the property is "deemed to pass" on B.'s death because he was competent to dispose of the remainder in fee, but having regard to the remarks of Lord Davey in *Re Studdert* (see p. 106) this view is not pressed by the office.
3. A., by indenture of 1893, settled Blackacre upon trust to pay 500*l.* per annum to his wife B. during joint lives of A. and B., and subject thereto in trust for his son C. for life, remainder to A. for life, remainder to C.'s first son in tail male. A. died 1912, leaving B. and C. surviving. Estate Duty is payable on the cesser of the 500*l.* annuity notwithstanding the failure of A.'s life interest.
4. A., by voluntary settlement in 1911, settled 1,000*l.* on his wife B. for life, remainder to A. for life, remainder to their children in equal shares. A. died 1912, leaving B. and children surviving. Estate Duty is payable on A.'s death under sect. 2 (1) (c) of the Finance Act, 1894, as amended by sect. 59 (1) of the Finance (1909–10) Act, 1910.

The interest of the deceased must be in expectancy and not in possession, and subsequent limitations under the settlement must continue to subsist.

Examples :—

1. Property is settled on A. for life, remainder to B. in tail, remainder to C. in tail. B. dies in the lifetime of A. without issue. Estate Duty is not payable on his death as a subsequent limitation (C.'s estate tail) continues to subsist.
2. Property is settled on A. for life, remainder to B. in fee. B. by another settlement settles his remainder to himself for life, remainder to C. in fee. B. predeceases A. It is thought no Estate Duty is payable on B.'s death, and in practice none is claimed.

"Subsequent limitations" includes one subsequent limitation. See

Att.-Gen. v. *Wood.*

By marriage settlement of 8th January, 1877, Mrs. Henrietta B. Vaughan settled funds, in trust for herself during joint lives of herself and husband, Charles L. Vaughan, remainder to the survivor for life, remainder to their children (none), remainder in default to the wife absolutely if she survived her husband (happened). On the death of the husband, in 1895, Estate Duty was claimed on the enlargement of Mrs. Vaughan's life interest to an absolute one.

It was held (by Williams and Wright, JJ.) sect. 5 (3) applied, that subsequent limitations continued to subsist after the death of Mr. Vaughan, viz., the limitation to Mrs. Vaughan absolutely. "Subsist" properly describes any estate created by the settlement which has not come to an end. Therefore no Estate Duty was payable. The result of this decision is, that Estate Duty cannot be, and in fact is not now, claimed on the enlargement of any life interest into an absolute one whether the life interest enlarged is that of the settlor or of some other person. Sect. 14 of the Finance Act, 1896, it may be observed, only exempts the enlargement of the life interest of the *settlor* from Estate Duty.

Att.-Gen. v. *Glossop.*

The facts are as follows:—

By marriage settlement, of the 18th November, 1873, on the marriage of Samuel F. G. Bythesea to Mary Prideaux Mitchell, the husband and wife respectively settled funds in trust to pay out of the income, during their joint lives, 400*l.* per annum to the wife, and the residue of the income to the husband, and after the death of the wife, if the husband survived, to pay the whole of the income to the husband for life, and after the death of the husband, if the wife survived, to pay the whole of the income to the wife for life, remainder on the death of the survivor upon trusts for their children, and failing children, the husband's fortune in trust for the husband absolutely, and the wife's fortune in trust for the wife absolutely if she survived her husband, but if she predeceased, then in trust for such persons as she should absolutely by will appoint, or in default for her next of kin.

There was no issue of the marriage, and the husband died on the 3rd May, 1904, leaving his wife surviving.

Estate Duty was paid on the whole of the husband's fortune without any deduction in respect of a proportion of the wife's annuity.

The Crown claimed Estate Duty on all the wife's fund in possession of the trustees (the wife's fund included a reversion which had not fallen in and on which Estate Duty was not claimed).

Held (by Walton, J.) that Estate Duty was payable in respect of the wife's fund as property passing on the husband's death, except on the capital sum that was necessary to produce the proportion of the annuity payable out of the wife's fund, that the husband's interest in this capital sum failed before it became an interest in possession, and therefore sect. 5 (3) of the Finance Act, 1894, applied. Walton, J., said that the husband's interest in the proportion of his own funds which produced the proportion of the wife's annuity did not fail, that on his wife's death it would still belong to the husband, his executors, administrators, or assigns, but the duty, on the husband's funds, was not disputed.

The Court of Appeal (Henn Collins, M. R., Cozens-Hardy and Farwell, L. JJ.) affirmed this decision.

The observations of Walton, J., as to the husband's interest in the proportion of the capital of his own funds which produced the part of the 400*l.* per annum payable to the wife, are *obiter dicta*, and it is now conceded that a deduction may be taken against the claim for Estate Duty on the husband's funds, in respect of the capital necessary to produce a proportion of the 400*l.* per annum.

If the deceased was not entitled to receive any income from the property his interest is considered to have failed before it became an interest in possession. See

In re Harrison, Johnstone v. *Blackburn, &c., Royal Infirmary.*

A testator who died in February, 1914, bequeathed a legacy of 30,000*l.* to his nephew A. for life, remainders over. A. died in September, 1914, before his legacy had been appropriated or provided for, and so that he never became entitled to any income therefrom.

Held by Sargant, J. (on the 14th June, 1918), that Estate Duty was not chargeable on the legacy in connection with A.'s death.

Sargant, J., said that A.'s interest "was according to the settled rule in these matters, merely the right to receive the income of the settled legacy as accruing from and after the expiration of one year from the testator's death, or from and after any earlier time when the legacy should have been set aside and appropriated. And as matters have turned out neither [A.] nor his estate has ever become entitled to a penny piece in respect of the income of the legacy. In my judgment this amounts to a failure of the interest by reason of death before it became an interest in possession."

(4) Any person paying the Settlement Estate Duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* stamp duty (if any) charged on the settlement in respect of that property.

The *ad valorem* stamp duty is the five shillings per cent. stamp duty imposed on *personal* property comprised in a settlement by the Stamp Act, 1891; it was not formerly payable on real property.

The *ad valorem* stamp duty was increased by sect. 74 of the 1910 Act to 1*l.* per cent. in respect of settlements executed on or after the 29th April, 1910, except in the cases of marriage settlements. This increased duty was also extended to settlements of real property.

In some cases the stamp duty is impressed on the instruments by which the trust property is transferred to the trustees and not on the settlement itself.

In such cases the *ad volorem* duty on such instruments may be deducted.

If the deceased exercised by will an absolute power of appointment, under a settlement dated after the 1st August, 1894, so as to create a settlement and render the property liable to Settlement Estate Duty, the *ad valorem* stamp duty on the settlement would appear to be deductible against the Settlement Estate Duty, since the will exercising the power must be read into the settlement creating the power and the two instruments together constitute one settlement.

If the settlement comprises real and personal property which pass to different persons, the *ad valorem* duty should be deducted against the Settlement Estate Duty on the personal estate.

(5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate Duty, in like manner as for the purposes of Succession Duty.

This sub-section applies to estates purchased with money provided by Parliament in consideration of public services, such as estates settled on the Dukes of Wellington and Earls of Nelson, which cannot be sold under the Settled Land Acts, and also to estates which a tenant in tail, who is restrained from barring his estate tail by Act of Parliament, can sell under the Settled Land Act, 1882, s. 58 (1). See

Re Bolton's Settled Estates.

By a private Act of 1535 (27 Hen. 8, c. 16), real estates were limited (by way of settling certain differences which had arisen as to the title) to Lady Anne Mountjoye and Elizabeth Poulet respectively in tail, with cross remainders between them in tail, with a proviso that no tenant in tail should alien any of the settled estates, nor any other thing do to the hurt or disinheritance of his heirs or remainders, "but only for the joynter of wyfe or wyves for terme of lyfe or lyves of any husband that hath or shall mary any of them or any of the heires that shall be inheritable to any of the same landes and tenementes or for terme of lyfe of any other person, or for yeres or at wyll after custome of the manour, yeldying the true and anncyent rent of the same landes or tenementes so to him letten as is aforesaid."

By reason of the failure of the heirs of the body of Lady Anne Mountjoye, the entirety of the estates became vested in the heirs of the body of Elizabeth Poulet.

By a private Act of 1863 (26 & 27 Vict. c. 6) power was given for the Court of Chancery to direct a partition of the estates, which were then vested in Henry, second Duke of

Cleveland, and John William, Earl of Sandwich. As the result of the partitions, in 1869 and 1877, a moiety of the estates was allotted to the successors in title of Henry, second Duke of Cleveland, in severalty.

Henry G. Vane, fourth duke (died 1891), who subsequently succeeded to this moiety of the estates, limited such moiety in favour of his widow, Catherine Lucy W., Duchess of Cleveland, who died 18th May, 1901, and such moiety passed to three persons as coparceners in tail, among whom was Augustus W. H. Meyrick.

Augustus W. H. Meyrick died in March, 1902, after having appointed a life interest by way of jointure in favour of his widow, E. M., in the one-third share of the moiety to which he had become entitled. On the questions as to what Estate Duty and Succession Duty were payable on the deaths of C. L. W. Duchess of Cleveland, and Augustus W. H. Meyrick,

Held (by Joyce, J.) that in spite of the power of sale conferred on the successive tenants in tail by sect. 58 of the Settled Land Act, 1882, "no one of the persons successively in possession thereof was capable of alienating" the estates in question, and accordingly sect. 5 (5) of the Finance Act, 1894, applied, and Estate Duty was payable, not on the *corpus* or capital value, but out of the interest of the successor therein.

Held also that Succession Duty was not payable by E. M. in respect of the jointure appointed to her by her husband, A. W. H. Meyrick, because the predecessor was either her own husband, A. W. H. Meyrick (in which case no Succession Duty would be payable), or Elizabeth Poulet, the ancestor, in which last case no Succession Duty was payable by reason of the proviso at the end of sect. 1 of the Finance Act, 1894, the rate being 1 per cent.

The following case is illustrative of the effect of the Finance Act on an estate which up to this date had been thought to be inalienable.

Att.-Gen. v. *Duke of Richmond and others*
(*as to the Goodwood Estates*).

By a deed, dated 8th April, 42 Elizabeth, the Governor, Stewards, and Brethren of the Fellowship of the Hostmen of the town of Newcastle-upon-Tyne, with the consent of the Mayor and Burgesses, granted to Queen Elizabeth, her heirs and successors, a duty of 12*d.* for every chaldron of coal exported from Newcastle.

By Letters Patent, dated the 18th December (29 Car. 2), Charles II. granted to his illegitimate son, the first Duke of Richmond, this coal duty to hold the same unto and to the use of the first duke and the heirs of his body.

By a private Act (30 Geo. 2, c. 34) it was recited that the first duke died in 1723, leaving issue only a son (the second duke), and that the second duke died in 1750, and upon his death his son (the third duke) became seised to him and the heirs of the body of the first duke in tail general, of the coal duty, and after other recitals, it was declared that the third duke should be seised of the coal duty unto and to the use of the third duke and the heirs male of his body, and in default of heirs male of his body, to his brother and the heirs male of his body, with remainder to the heirs of the body of the first duke.

By an Act (39 Geo. 3, c. 84), after reciting that the ultimate reversion in the coal duties was vested in His Majesty, his heirs and successors (this is the first time there is any express mention of this reversion), it was enacted that it should be lawful for the Commissioners of the Treasury, on behalf of His Majesty, to contract with the third duke, for the absolute purchase of all the estate and interest of him (the third duke) and of all other persons, in the coal duties, for an annuity payable out of the Consolidated Fund by the Commissioners, and the third duke and the heirs male of his body, &c., were to have the same estate and interest in the annuity as in the coal duties, and no larger estate or interest.

In 1799 the Commissioners, in pursuance of that power, contracted on behalf of His Majesty, his heirs and successors, for the purchase of the coal duties, for an annuity of 19,000*l.*, to be payable out of the Consolidated Fund to the persons who would otherwise have been entitled to the coal duties. This was confirmed by 39 & 40 Geo. 3, c. 43.

By 39 & 40 Geo. 3, c. 103, power was given to sell part of the annuities or stocks and to invest the proceeds in land, which, when purchased, was to be conveyed to the use of such persons and for such estates as the annuity of 19,000*l.* would have stood limited.

By another Act in 1868 the trustees were authorised, on giving notice to the Crown, to sell certain lands and purchase other lands in lieu thereof to be settled to the same uses as before.

The sixth duke died in 1903, and was succeeded by his son, the seventh duke, as tenant in tail male of the entailed properties. Amongst the properties so purchased, which the duke was

possessed of on his death, were the Goodwood Estates. The bulk of the estates were purchased in 1810 and conveyed to the use of such persons and for such estates as the annuity of 19,000*l.* would have stood limited.

It was admitted by the defendants that the coal duties were not given by Charles II. for services rendered so as to come within 34 & 35 Hen. 8, c. 20, which made estates granted by the Crown for services rendered inalienable.

The Crown claimed Estate Duty was payable on the death of the sixth duke on the *principal value* of the property to which he was entitled as tenant in tail male in possession.

The trustees claimed that as the reversion was in the Crown the estates were inalienable, and therefore sect. 5 (5) of the Finance Act, 1894, applied, and Estate Duty was payable only on the life interest of the seventh duke.

Mr. Justice Bray held (on the 30th July, 1907) that the sixth duke was a tenant in tail within the meaning of sect. 15 of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), and could bar the entail, and therefore Estate Duty was payable on the principal value of the estates.

It follows that since lands falling within this sub-section are not within the provisions of the Finance Act, 1894, with respect to "settled property," they escape the charge of Settlement Estate Duty and that Estate Duty is payable on the death of every tenant in tail.

The Estate Duty is assessable on the value of the life interest of the successor calculated according to the method prescribed by sects. 21—26, 28, 31, and 32 of the Succession Duty Act, 1853.

The Estate Duty appears to be a charge on the "interest of the successor" only, and therefore if he dies before all the instalments are paid the balance can be recovered only against his personal representatives.

6.—(1) Estate Duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

Estate Duty includes Settlement Estate Duty (see *Re Webber, Gribble* v. *Webber*), and may be collected by means of stamps or such other means as the Commissioners prescribe. (See sect. 8 (16).)

(2) The executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to

dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate Duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

"**The executor**" is defined in sect. 22 (1) (d) as "the executor or administrator of a deceased person," and includes as regards any obligation under Part I. of the Finance Act, 1894, "any person who takes possession of or intermeddles with the personal property of a deceased person."

For an example of a case where a company was held liable as an executor *de son tort* for Probate Duty, see

Att-Gen. v. *New York Breweries Company.*

A testator, Henry Clausen, domiciled in America, was, at the time of his death, the registered holder of shares and debentures in a company whose registered office was in England. On the death of the testator in December, 1893, the company, at the request of the American executors, transferred the shares and debentures in the company's books into the names of the executors, and also paid them the interest which had accrued to testator's death. The executors had not taken out probate in England. It was held by the Court of Appeal and House of Lords that the company had made themselves liable as executors *de son tort* for the penalties for administering the personal estate of a person without obtaining probate. (Wills and Grantham, JJ., in the Queen's Bench Division were overruled.)

A special exception is made in favour of the Ionian Bank, Limited, when acting under the provisions of the Ionian Bank (Limited) Act, 1899 (p. 602).

"**Shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit.**"

The executor *must* pay the Estate Duty on all the free personal estate of the deceased in the United Kingdom or

abroad, assuming the deceased to have died domiciled in the United Kingdom, even although separate executors are appointed in respect of the assets abroad (see *Lord Advocate* v. *Douglas*, p. 518; and *In re Consuelo, Duchess of Manchester, Duncannon* v. *Manchester*, p. 519), and on all personal estate over which the deceased had an absolute power of appointment, whether by deed or will, and whether exercised or not. If the deceased had made an investment in the joint names of himself and another under such circumstances that he could at any time dispose of such investment, the executor would be liable to pay the Estate Duty thereon. The competency to dispose should be first ascertained.

The executor is not liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received (see sect. 8 (3)), and if he does pay the Estate Duty on any assets, whether they pass to him as executor or not, he is entitled to a charge thereon. (See note, however, at sect. 9 (5), if the assets pass to the executors "as such.")

An executor who paid Estate Duty to his solicitor who appropriated it to his own use, was held to be entitled to relief under sect. 3 (1) of the Judicial Trustees Act, 1896, where the will of his testator empowered him to employ agents and indemnified him against their acts and omissions. (See *In re Mackay, Griessmann* v. *Carr.*)

It is thought that sect. 29 of 22 & 23 Vict. c. 35 (which relieves an executor or administrator who shall have given the usual notices to creditors to send in their claims, against any liability after the expiration of the time named in the notices, for the assets distributed), does not apply to claims for Estate Duty since the Crown is not mentioned.

The executor is not, *as such*, accountable for the Estate Duty on the deceased's real estate, and this is not altered by the Land Transfer Act, 1897, because sect. 5 of that Act enacted:

> Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

See

Re Sharman, Wright v. *Sharman.*

A testator, John Sharman (died 18th April, 1900), devised his real estate on certain trusts, and, after giving pecuniary legacies, bequeathed all the residue of his personal estate, after

payment thereout of all his just debts, "funeral and testamentary expenses," on certain other trusts. On a summons to determine the question whether the Estate Duty on the death of the testator in respect of his real estate was payable thereout, or out of his personal estate,

Held (by Kekewich, J.) that as the Estate Duty on the real estate was made a first charge on the property, and the executors could obtain probate without paying it, that duty did not come within the expression "testamentary expenses"; the real estate, therefore, must bear its own duty. Kekewich, J., held he was following the decision in *Re Jolley, Neal* v. *Jolley*, 17 T. L. R. 244, and that of Buckley, J., in *Re Palmer* (1900), W. N. 9. The Land Transfer Act, 1897 (60 & 61 Vict. c. 65), did not alter the incidence of the Estate Duty.

Estate Duty on *real estate* is therefore not a testamentary expense, but Estate Duty on personal estate is a testamentary expense. See

Re Clemow, Yeo v. *Clemow.*

A testator directed his executors to pay the income of his residuary estate to his wife for life, and after her death, out of such residue, to pay "his widow's funeral and testamentary expenses and debts."

The testator's wife survived him and left what purported to be a will. B., one of her next of kin, commenced proceedings against the alleged will of the widow, and obtained a decree against such will, but no costs were allowed against her estate. Subsequently letters of administration to the widow's estate were granted to Y. with the assent of B. The testator's executors paid the widow's funeral expenses and debts. On a summons to determine what "testamentary expenses" were to be paid out of the testator's estate,

Held (by Kekewich, J.) that the term "testamentary expenses" included costs and expenses properly incurred in the administration of the estate of the intestate widow, also the costs of B. of the probate action and the "Estate Duty" payable on the death of the widow.

Lord Sumner in *O'Grady* v. *Wilmot*, as to personal estate over which the deceased had and exercised by her will an absolute power of appointment, said: "I agree that as the executor would have to pay Estate Duty on this property on proving the will it is a testamentary expense," but he went on to add that the gift of the residue, subject to the payment of

"testamentary expenses," was not sufficient to negative the operation of sect. 9 (1) of the Finance Act, 1894.

Estate Duty on personal estate over which the deceased had, but did *not* exercise an absolute power of appointment, and which, in default of such exercise, passed to others than the deceased, was held not to be a "testamentary expense" in *Porte* v. *Williams*, but the Lord Chancellor (Lord Buckmaster) in *O'Grady* v. *Wilmot*, referring to *Porte* v. *Williams*, said: "I do not agree with the distinction which [Joyce, J.] draws between the duty on the appointed and the unappointed fund."

As to whether a *donatio mortis causâ* is property of which the deceased was "competent to dispose," see *Re Hudson, Spencer* v. *Hudson*. The Estate Duty thereon is not a "testamentary expense."

Re Kingdon and Wilson.

Collins, Stirling, and Cozens-Hardy, L. JJ. (in the Court of Appeal), held that a payment in respect of Estate Duty under sect. 6, made by a solicitor on behalf of his client, is not a "disbursement" within the meaning of sect. 37 of the Solicitors Act, 1843, and therefore is not properly included in his bill of costs. *Re Lamb*, 23 Q. B. D. 5, which held that Probate Duty was such a disbursement, and the decision of Byrne, J., in the Court below, were both overruled.

If a testator leaves part of his personal estate and part of his real estate undisposed of, and the undisposed-of personal estate is not sufficient to pay the Estate Duty on all the personal estate (including that specifically bequeathed), the executor should resort to the undisposed-of real estate to meet the deficiency of the Estate Duty before resorting to the specifically bequeathed personal estate. See

In re Pullen, Parker v. *Pullen.*

This was an originating summons taken out by the surviving executor of the will of the testator for the determination of the question whether, having regard to the fact that the residuary or undisposed-of personal estate was insufficient to pay the testator's funeral and testamentary expenses and debts, the Estate Duty payable in respect of the specifically bequeathed personalty was wholly payable out of the undisposed-of real estate, or whether the same or any part thereof was payable out

of the personalty comprised in the respective specific bequests, and in what proportions.

The position of the estate was this; there was:—

(1) Specifically devised realty.
(2) Undisposed-of realty of value of about 2,600*l.*
(3) Leaseholds (valued at about 50,000*l.*) and personalty specifically bequeathed; and
(4) Undisposed-of personalty.

The most valuable part of the estate consisted of the specifically bequeathed personalty.

The undisposed-of personal estate amounted to about 2,000*l.*

The funeral and testamentary expenses and debts (including in testamentary expenses the Estate Duty on the personalty) amounted to about 4,800*l.*, being 2,800*l.* more than the personal estate undisposed of.

The Estate Duty on the specifically bequeathed personal estate amounted to over 2,400*l.*, and had been paid with the funeral and other testamentary expenses and debts.

The undisposed-of realty was of the value of 2,600*l.*

The case of *Shepheard* v. *Beetham* (1877), L. R. 6 Ch. D. 597, was quoted as an authority that Probate Duty ought not to be thrown on the undisposed-of realty.

Warrington, J., distinguished Estate Duty from Probate Duty, and held, on 25th February, 1910, that Estate Duty on the personalty was part of the testamentary expenses, and as such ought to be paid out of the assets in the same order in which other deductions payable by the executors ought to be borne, and therefore the claim of the heir-at-law to have the assets marshalled in his favour, so as to make a distinction between Estate Duty and other testamentary expenses, ought not to be entertained. Therefore, the Estate Duty on the personal estate (including the Estate Duty on the specifically bequeathed personalty) so far as the undisposed-of personal estate was insufficient to meet the debts, funeral and testamentary expenses (including the Estate Duty) was payable out of the undisposed-of real estate in priority to the specifically bequeathed personalty.

The executor, who is also a trustee, may of course, in his capacity as trustee, be liable to pay the Estate Duty on real estate devised to him in trust. (See sect. 8 (sub-sect. 4).)

He may also in the case of property not under his control pay the Estate Duty thereon, but only if the persons accountable

(see sect. 8 (sub-sect. 4) as to who are accountable) for the duty in respect thereof request him to make such payment.

"**Inland Revenue affidavit.**"—There are numerous forms to fit various circumstances. (See Lists of Forms.)

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, so soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

Under this sub-section an executor, who does not know the value of the property passing on the deceased's death, is allowed to bring in an Inland Revenue affidavit and pay the Estate Duty on the assets he is aware of, at the same time undertaking to pay the Estate Duty on the further assets when ascertained, and also the further Estate Duty (if any) on the property first accounted for, by reason of, say, a higher rate of duty becoming payable.

Notwithstanding this section, executors must make full inquiries and swear to the best of their information and belief. (See *In the goods of Beech*, Times, 9th August, 1904.) They must also pay the Estate Duty on the whole of the personal estate that they know of, notwithstanding that only a limited grant (such as "*pendente lite*") is applied for. (See *In the goods of Baron Grimthorpe, Beal* v. *Grimthorpe*, Times, 6th June and 1st and 8th August, 1905.)

The executor must ascertain the value within a reasonable time. See

In re Horrex.

The deceased died in 1904 possessed of (*inter alia*) a one-half share of the goodwill and leasehold interest in Horrex's Hotel in the Strand. The property was mentioned in the Inland Revenue affidavit leading to probate of the deceased's will, but the executors stated, as they claimed to be entitled to do under

sect. 6 (3) of the Finance Act, 1894, that they could put no value on the property and that the question of the value must await the sale thereof.

The Chief Valuer at Somerset House wrote asking the executors for certain information to enable him to put a value on the property, but the executors refused to supply it. A writ was issued against the executors under the Crown Suits Act, 1865, which was made applicable to Estate Duty by sect. 8 (1) of the Finance Act, 1894, calling upon the executors to appear within fourteen days in the King's Bench Division to show cause why they should not deliver a corrective affidavit. Counsel on behalf of the Crown moved for a writ of attachment against the executors. Bray, J., said (Times, 9th March, 1910, p. 3, col. 5): "It is impossible to say that a valuation cannot be placed upon the property. Executors must use diligence in order to ascertain the value of the property. They must ascertain it within a reasonable time."

An order for attachment was made accordingly but, by consent, it was to lie in the office for three months.

(4) Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

The accounts required by this sub-section for Estate Duty on property not paid by the executor are:—

C-1 (in duplicate) for the Estate Duty on the deceased's free real estate and on settled property.

C-2 (in duplicate) for the Settlement Estate Duty.

C-3 for instalments of Estate Duty and Settlement Estate Duty.

These accounts should be delivered within six months after the death, but interest on the Estate Duty on real estate does not commence to run until a year after the deceased's death, unless the real estate is sold. (See sub-sect. 8.)

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

"**Every estate**" includes the several estates into which property passing on the deceased's death may be split up for the purposes of aggregation, under sect. 4 of the principal Act.

All income is apportionable under the Apportionment Act (33 & 34 Vict. c. 35).

If stock has been valued according to the market price, quoted in the daily Stock Exchange Lists, nothing need be added for apportioned income, such income being included in the valuation, but if the stock is quoted "ex dividend," then, of course, the accrued income must be added.

No income since the death need be added.

(6) Interest *at the rate of three per cent. per annum* on the Estate Duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, *and shall form part of the Estate Duty.*

The words in italics are repealed by sect. 40 (and Sched. III.) of the Finance Act, 1896.

By sect. 18 (1) of the Act of 1896 "Simple interest at the rate of 3 per cent. per annum, without deduction for income tax, shall be payable upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty." This section is retrospective, and therefore applies to all unpaid Estate Duty whenever the deceased died.

This interest is not payable in cases where (under sect. 16) the fixed duty of 30*s.* or 50*s.* is paid within a year of the deceased's death.

By sect. 30 of the Finance Act, 1919, the rate of interest was increased to 4 per cent., in the case of interest accruing due after the commencement of that Act, viz., on and after the 31st July, 1919.

Example :—

If a person died on the 10th May, 1919, and Estate Duty is not paid until the 1st October, 1919, interest on the duty is to be calculated at 3 per cent. from the 11th

May to the 30th July, 1919, inclusive, and at 4 per cent. from the 31st July, 1919, to the 1st October, 1919 (inclusive).

The increased rate applies also to Succession Duty and Legacy Duty.

"**And shall form part of the Estate Duty.**"

It was held by North, J., in *Re Fish, Lea* v. *Fish* (Law Times, 17th July, 1897), that interest on the Estate Duty payable under this sub-section was payable out of capital, but these words having been repealed by sect. 40 of the Finance Act, 1896, the interest no longer forms "part of the Estate Duty," and would not be payable out of the capital. (See *Re Earl Howe's Settled Estates, Earl Howe* v. *Kingscote*, p. 216.)

On the question of how payments made for Estate Duty and interest should be apportioned as between capital and income where the testator's residuary estate is settled, see

In re McEuen, McEuen v. *Phelps.*

The testator died in 1911, having by his will (*inter alia*) given certain legacies and annuities free of Legacy Duty and settled four-fifths of his residuary estate upon three persons for their respective lives, with remainder to their children. The executors paid the Estate Duty, Legacy Duty, legacies, debts, &c., at various dates during the year immediately following the testator's death; and questions arose as to the manner in which these payments should be apportioned between capital and income in the executors' account.

Held by Sargant, J. (on the 30th October, 1913), that the rule in *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295, was not to be followed too strictly; that in this case there should be charged against the life tenants of the residuary estate, in respect of the payments for Estate Duty, &c., interest (at an agreed rate) upon the capital sum which would, with such interest, make up the sums paid in respect of Estate Duty, &c., such interest being calculated only during the respective periods from the death of the testator to the respective dates of payment; that other methods of adjustment were available, and that elaborate calculations need not be made in every case.

Also

In re Wills, Wills v. *Hamilton.*

The deceased died in 1909, leaving a large estate, the payments to be made out of which prior to the ascertainment of

the residue were not completed until about five years after the death. Certain shares of the residuary estate were settled, and there was a clause in the will empowering the trustees to postpone a sale previously directed and declaring that the income from the estate, however invested, should be treated as income and no part added to the capital. The income earned had varied considerably in consequence of a reversion falling into possession. Questions arose as to how the payments for Estate Duty and interest thereon, &c., ought to be apportioned as between capital and income.

Held by Sargant, J., on the 16th March, 1915, that the provisions of the will did not displace the rule in *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295, and in *In re McEuen* that the true rule was to deprive the tenant for life of the income of such a sum as with interest from the date of the death to the date of payment was sufficient to satisfy the liabilities; that the principle was not limited to the first year, that the average rate of interest earned in each year should be adopted for the calculations, and that as regards Estate Duty the total amount paid for duty and interest thereon was strictly the amount to be treated as the debt or liability to be discharged.

It follows from the above that where, as usually happens, the interest earned by the residue is more than 3 per cent. (4 per cent. since 31st July, 1919, see sect. 30 of the Finance Act, 1919), the amount to be deducted from the capital is, accordingly, less than the amount paid for Estate Duty.

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

This sub-section does not apply to duty on real estate, as to which see sub-sect. 8, nor to such objects of national, scientific, or historic interest as are, under sect. 20 of the Finance Act, 1896, exempt from Estate Duty until sold or in the possession of a person competent to dispose of them.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments,

or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum, from the date at which the first instalment is due, *less income tax*, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

The words in italics are repealed by sect. 40 (and Schedule III.) of the Act of 1896.

"**The duty**."—This includes Settlement Estate Duty (if payable) as well as Estate Duty.

"**Upon an account of real property**."—This account is C-1 for the first instalment of the Estate Duty, subsequent instalments are accounted for on C-3; of course, the first instalment may be paid on the Inland Revenue affidavit and the subsequent instalments on the form C-3.

Real estate directed to be sold prior to the deceased's death under some instrument, being equitably converted is treated as personal estate, although not actually sold in his lifetime, and interest on the duty will be payable from the death.

Real property directed by the deceased's will or some other instrument to be sold at or after his death is not converted into personal estate for the purpose of this sub-section.

The true test appears to be what was the equitable nature of the property immediately preceding the death. Therefore personal estate which at the moment prior to the death of a limited owner was impressed in equity with the character of real estate is in connection with that death to be treated for the purposes of sect. 6 (8) as real property and not as personal property.

Leaseholds are not "real property" for the purposes of this sub-section; the deceased's unsettled leaseholds should therefore be accounted for on the Inland Revenue affidavit.

Land subject to an annuity under the Land Purchase (Ireland) Acts is to be treated as real property for the purposes of this sub-section. (See sect. 61 (3) of the 1910 Act.)

Timber.—Where the estate comprised timber, trees or wood, see sect. 61 (5) of the 1910 Act, and notes thereon.

"**At the option.**"—This option, whether yearly or half-yearly instalments are chosen, can only be exercised once, and the method once chosen should be adhered to, but, of course, the whole duty may be paid at any time.

"**With interest.**"—As to whether this interest is payable out of income or capital of settled property, see sub-sect. 6, and also sect. 9 (5).

The rate of interest accruing on and after the 31st July, 1919, was increased to 4 per cent. by sect. 30 of the Finance Act, 1919.

"**From the date at which the first instalment is due,**" viz., twelve months after the death.

"**And the first instalment shall be due at the expiration of twelve months from the death.**"

It therefore follows where Estate Duty or Settlement Estate Duty is being paid by instalments by a person party to a marriage with a deceased wife's sister, and such duties would not have been leviable if the marriage had been legal at the time of its contraction, and sect. 2 of the Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), makes payable only such death duties as are due and payable before the 28th August, 1907, instalments falling due on or after the 28th August, 1907, cease to be payable.

"**And the interest on the unpaid portion of the duty shall be added to each instalment, and paid accordingly.**"

For example, the first instalment is paid at the expiration of the first year from the death, no interest being then payable; the second instalment is payable at the expiration of the second year from the death, with interest at 3 per cent. per annum on the seven-eighths of the duty from a year after the death, and so with subsequent instalments.

If, say, the second instalment had not been paid at the expiration of the second year, but was tendered a month later, the interest should be added at 3 per cent. for *one year* on seven-eighths of the duty (being the duty unpaid) and further interest added for one month on the one-eighth instalment in arrear.

"**And in case the property is sold, shall be paid on completion of the sale.**"—Immediately after the sale (no matter under what circumstances the sale takes place) the whole of the unpaid

instalments are due, and carry interest at 3 per cent. (4 per cent. after 30th July, 1919) per annum from the date of the sale. A purchaser should therefore, where his abstract of title discloses a recent death, inquire whether all the instalments have been paid.

An abstract of title is defective that does not show whether the Estate Duty has been paid. (See *Conlon and Faulkener's Contract.*)

Estate Duty on the unpaid purchase-money of land agreed to be sold under the Land Purchase (Ireland) Acts may be postponed until the purchase-money is actually paid, subject, however, to the payment of interest on the amount of the duty at the rate of 3 per cent. per annum. (See sect. 61 (4) of the 1910 Act.)

7.—(1) In determining the value of an estate for the purpose of Estate Duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(c) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

Sect. 57 of the Finance (1909–10) Act, 1910, prevents deduction being taken for debts or incumbrances created by the deceased for the purchase of an interest in expectancy where the person from whom such interest was purchased

becomes entitled to any interest therein derived from or through the deceased.

"**In determining the value of an estate for the purpose of Estate Duty.**"—This sub-section, it would seem, only applies to the free estate of the deceased. Lord Davey, in *Earl Cowley* v. *The Commissioners of Inland Revenue*, said: "All the learned judges in both Courts below, except perhaps Rigby, L. J., have agreed that sect. 7 (1) applies only to the case of an estate passing from a deceased owner subject to his debts and incumbrances."

The same decision was arrived at in *Lord Advocate* v. *Henderson's Trustees* (see p. 166), and in *De Freyne* (*Lord*) v. *Inland Revenue Commissioners*. (See p. 139.)

The Scotch Courts have apparently come to a different conclusion in the following case:—

Colquhoun's Trustees v. *Colquhoun's Trustees.*

Sir Jas. Colquhoun, the fourth baronet (who died on 18th December, 1873), left a trust disposition and settlement dated 1st May, 1871, whereby the whole of his unentailed estates in Scotland were settled, in the first place, to provide for the payment of the debts on such estates, and then to pay an annuity, increasing in amount with the corresponding diminution of the debts, from 4,000*l.* to 10,000*l.* per annum to his son, Sir Jas. Colquhoun, the fifth baronet, for life, and to hold the fee of the estates for the behoof of the heir who should succeed the fifth baronet in the entailed portion thereof. The trustees were empowered, in the event of the fifth baronet requesting them to do so, to grant certain provisions for the use of his (the fifth baronet's) widow and younger children. These were granted as follows:—in events 20,000*l.* to the two daughters of the fifth baronet's first marriage, and 1,500*l.* annuity to his second wife, Ivie Muriel Ellen Urquhart (afterwards Mrs. Harington), payable as from the death of the fifth baronet.

On the death of the fifth baronet, on 13th March, 1907, the whole of the entailed and unentailed estates passed to Sir Alan John Colquhoun, the sixth baronet (a cousin of the fifth baronet), and the value of the estates, including certain moveable funds in the hands of the trustees of the fourth baronet, amounted to 524,223*l.* 4*s.* 2*d.*, and Estate Duty was payable on that amount at 7½ per cent.

When the accounts for Estate Duty were passed, the Inland Revenue authorities declined to allow, as a deduction from the capital value of the estates passing on the death of the fifth baronet, the 20,000*l.* portions and capital value of 1,500*l.* jointure. A special case was submitted on behalf of the testamentary trustees of Sir Alan J. Colquhoun (who died on the 14th March, 1910) of the first part, the trustee of the portions for younger children of the second part, and Mrs. Harington of the third part, to determine whether a rateable part of the Estate Duty paid on Sir A. J. Colquhoun's succession was or was not recoverable from the second and third parties respectively.

The questions of law were stated to be :—(1) Did an allowance fall to be made in the terms of sect. 7 (1) of the Finance Act, 1894, for (a) the portion of 20,000*l.*, and (b) the 1,500*l.* annuity in determining the value for the purpose of Estate Duty of the estate passing on the death of the fifth baronet; (2) were the first parties entitled to recover from the second party a proper rateable part of the Estate Duty applicable to the value of the portion paid to him; and (3) were the first parties entitled to recover from the third party a proper rateable part of the Estate Duty applicable to the capital value of her annuity of 1,500*l.*?

The Court of the First Division in Scotland (The Lord President, Lord Johnston, and Lord MacKenzie, on 20th March, 1913) answered the first question in the affirmative, and the second and third in the negative. The Lord President said (*inter alia*) that "Sir Alan was wrong in allowing the Crown to insist that no deduction was to be made, and if that was so, it was clear his trustees could not claim from the second and third parties, because he never ought to have paid on their interests."

Lord Johnston said (*inter alia*): "I think the combined effects of sect. 4 and sect. 7 (1) of the Finance Act, 1894, is that Sir James' (the fifth baronet's) children's provision of 20,000*l.*, and his wife's provision of 1,500*l.* a year, are incumbrances to be deducted from the value of the main settlement estate, and are estates by themselves, though it may be, to be aggregated with other estate passing on the death of Sir James, their father, in order to ascertain the rate of duty. I admit there is some difficulty in reconciling the provisions of sects. 4 and 7 with that of 14 (1)."

This case is somewhat difficult to understand, because the real point at issue seems to have been what rate of Estate Duty the portion and jointure ought to bear. The judgments proceed

on the basis that the main estate formed one estate by itself under sect. 4 of the Finance Act, 1894, whereas an estate in England settled in a similar manner would (it is thought) be liable to limited aggregation under sect. 12 of the Finance Act, 1900, as explained on p. 91.

The proviso to sect. 4 of the Finance Act, 1894, was quoted in the judgments without any reference to the fact that the greater part of such proviso was repealed by sect. 18 of the Finance Act, 1900, as to persons dying on or after 9th April, 1900.

It was held that this sub-section does not apply to settled estates in

De Freyne (Lord) v. *Inland Revenue Commissioners.*

By six deeds, dated 22nd November, 1876, the deceased, in consideration of natural love and affection, charged his estates in Roscommon and Sligo with annuities in favour of his five brothers and a sister respectively for their lives, each of the annuities being reducible in the event of the annuitant becoming bankrupt, and he further directed that, on the death of each annuitant, a capital sum for his or her children should be raised out of the estates, and be paid to such children when they attain 21 or, females, married.

The capital sum payable on any death had no direct relation to the value of the slice of the estate set free by the termination of the annuity on such death.

By deed, dated 6th February, 1877, the deceased settled the said estates, subject to the annuities and capital charges above mentioned, upon trust for himself for life, with remainder, in the events, for his eldest son in tail.

By deed, dated 11th July, 1901, deceased's eldest son barred his estate tail under said deed, and deceased and the son resettled same to such uses as they should jointly appoint, and, in default, to pay 100*l.* per annum to said son during the joint lives of deceased and himself, and subject thereto upon trust for deceased for life, with remainder for said son for life, with remainders over.

In the Estate Duty Account which had been delivered in respect of the estates in question as passing on the death, on 22nd September, 1913, of the deceased, under the settlement dated 11th July, 1901, the accountable persons contended that the values only of the six annuities created by the six deeds above mentioned—and which annuities were still subsisting—

should be deducted, and not, as required by the office, the capital or slice necessary to provide the annuities, while, on the other hand, the accountable persons claimed to deduct the capital sums which, as stated, were not raisable until the deaths of the several annuitants.

The accountable persons based their contention upon the fact that only the equity of redemption of the estates was settled by the deeds of the 6th February, 1877, and 11th July, 1901, and, accordingly, that upon the decision in *Cowley* v. *Inland Revenue Commissioners,* [1899] A. C. 198, the value of the equity of redemption alone is the value for Estate Duty.

The duty having been assessed on the basis of the official view, an appeal was lodged against the assessment under sect. 10 of the Finance Act, 1894.

In their answer to the appeal, the Commissioners, as an alternative to the assessment, submitted (*inter alia*) that no allowance at all could be made for the annuities or capital sums, as they were created by deceased otherwise than for full consideration in money or money's worth and any allowance was prohibited by sect. 7 (1).

Held by Cherry, L. C. J., and Gibson, J. (on 15th June 1916), that the property which passed on the death of the deceased was the settled estates less the actuarial value of the annuities and capital sums charged by the six deeds.

The Lord Chief Justice said [1916] 2 I. R. p. 466 : "The only way in which, so far as I can see, *Cowley* (*Earl*) v. *Inland Revenue Commissioners,* [1899] A. C. 198, can be reconciled with sect. 7 (1) of the Finance Act, 1894, is by holding that the operation of this sub-section is confined to unsettled property."

The allowance of the actuarial value of annuities charged on settled properties is considered to apply only to cases on all fours with the *De Freyne case,* in others the practice is to allow a deduction of the capital sum necessary to produce the annuities.

It follows, therefore, that annuities charged by the deceased on estates put into settlement by him in his lifetime can be deducted from the value of such estates passing on his death if the annuities took effect in possession more than a year (now three years) prior to his death.

Example :—

A. settled Blackacre upon trust to pay B. 100*l.* per annum for his life, and subject thereto to A. for life, remainder to C. in fee.

On A.'s death, capital to produce the 100*l.* annuity may be deducted from the value of Blackacre.

"**Reasonable funeral expenses.**"—This does not include other than the ordinary necessary expenses of the burial. For example, it does not include the cost of mourning or tombstone, although it would include the cost of the carriage of the body from abroad and of embalming it.

"**Debts and incumbrances.**"—All debts and incumbrances created by the deceased's predecessors in title can be deducted if remaining due at his death, but as to debts and incumbrances created by the deceased, they cannot be deducted unless created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, and to take effect out of his interest.

An annuity payable to the Irish Land Commission under the Irish Land Purchase Acts, being a statutable reservation to the Crown, is in the nature of a Crown rent and is, accordingly, not an "incumbrance" within the meaning of sect. 7, sub-sect. 1. See

Inland Revenue Commissioners v. *Cookman.*

In this case the executor contended that the value of a holding, purchased under the Irish Land Purchase Acts, was the difference between 1,917*l.* (the agreed value of the fee simple of the land unencumbered) and 1,557*l.* 17*s.* 7*d.* (= the redemption value of the annuity), viz., 359*l.* 2*s.* 5*d.*, whereas the Crown claimed that the market value of the land if sold subject to the annuity was 800*l.* 800*l.* was held to be the value for Estate Duty purposes. The reason for this discrepancy was because a purchaser would acquire the right that the advance (made by the Crown to enable the deceased to purchase the property) should be repaid by instalments payable over a long period of years, such instalments being calculated at a rate of interest much lower than that at which anyone of the public could obtain the same from a private source.

"**Bonâ fide for full consideration in money or money's worth.**"—The meaning of this was considered in

Att.-Gen. v. *Duke of Richmond* (*Re Scotch Estates*).

The facts are as follows:—

In 1872, the late Duke of Richmond was heir of entail and

enfeft and in possession of the Gordon Richmond estates in Scotland, his son (the next duke and the defendant), then Earl of March, being the next heir, and the latter having a son, Lord Settrington, then aged two years. By a deed of entail dated 7th and 9th August, 1872, afterwards duly recorded and registered, the late duke and the defendant, under a power then vested in them, re-entailed and resettled the said estates. Under this entail, the order of succession after the late duke was as follows:—(a) the defendant; (b) Lord Settrington; (c) the heirs male of Lord Settrington's body; (d) the other heirs male of the body of the defendant; (e) the other heirs male of the body of the late duke; (f) the heirs female of the body of the defendant; (g) the other heirs female of the body of the late duke; (h) the nearest heirs of the late duke; (i) the nearest heirs and assigns whomsoever of the defendant. This deed also contained a proviso and declaration enabling the late duke and the defendant jointly, at any time during their joint lives, and after the death of one of them, for the survivor jointly with Lord Settrington (if of the age of twenty-five years) to dispose of the estates as if they were held in fee simple and free from the entail. This power was exercised by the late duke and the defendant in March and May, 1895, to enable the late duke to borrow 25,000*l.* and 10,000*l.* By the same deed of entail an annuity of 3,000*l.* was made payable to the defendant by the late duke during his life. In 1897 the late duke was still alive and was 79 years of age, and Lord Settrington was 26 and married.

On the 12th April, 1897, the late duke presented a petition to the Court of Session in Scotland, asking the Court, on the fulfilment by him of certain conditions, to approve of an instrument of disentail.

This procedure was authorised by a series of Scotch Acts, called the Entail Acts, the most important being 11 & 12 Vict. c. 36 (1848), 38 & 39 Vict. c. 61 (1875), and 45 & 46 Vict. c. 53 (1882), and by virtue of these Acts the late duke, as heir of entail enfeft and in possession of the estates, was entitled to disentail them with the consent of the defendant and Lord Settrington, or without their consent by paying into a bank or giving proper security over the estates for the value in money of their respective expectancies or interests in the entailed estates, such values being ascertained by the Court.

The proper procedure was followed by the late duke, and the interest of the defendant was valued by the Court at 415,000*l.*, and that of Lord Settrington at 287,000*l.* On the

6th October, 1897, the late duke executed a bond and disposition in security in proper form, in favour of the defendant for 415,000*l.*, and another in favour of Lord Settrington for 287,000*l.*, which were duly registered on the 19th October. On the 20th October the Court made an order approving the instrument of disentail, which the duke had executed on the 19th June, and ordering the Keeper of the Register of Tailzies to record the same, and this was on the 19th November duly recorded and registered; the duke thereupon became owner in fee of the estates subject to the old incumbrances and said two bonds.

By an assignation and deed of trust dated 11th and 15th November, 1897, the defendant and Lord Settrington assigned said two sums to trustees upon trust to pay the income thereof to the defendant for his life, and after his death to Lord Settrington with divers limitations over.

On the 20th April, 1898, the late duke made a *mortis causâ* disposition and deed of entail of the estates whereby he entailed them from his death upon the persons therein named, the substantial difference between this and the entail of the 7th and 9th August, 1872, being that the estates were tied up for one further generation.

No interest was paid by the late duke to the defendant in cash upon the two bond debts, but an account was kept which showed, on the one side, the interest due on the two bonds, and on the other certain voluntary payments, which the late duke had been in the habit of making for many years, and the duke executed a bond and assignation in security for the balance due to the defendant. This was done each year until the late duke's death, when the total amount of these bonds amounted to 88,314*l.* 8*s.* 10*d.* In 1899, and again in 1903, the late duke charged the estates (subject to all the incumbrances) to secure two sums of 6,000*l.* and 5,000*l.* borrowed by him.

The late duke died on the 27th September, 1903, and after his death the defendant delivered to the Commissioners of Inland Revenue an account of the Gordon Richmond Estates, as passing on the death of the late duke, for Estate Duty purposes. On the credit side of these accounts the value of the estates was shown as 1,102,221*l.* 13*s.* 9*d.*, and on the debit side deductions for debts and incumbrances were shown as 1,149,314*l.* 8*s.* 10*d.*, which included said sums of 415,000*l.*, 287,000*l.*, and 88,314*l.* 8*s.* 10*d.*; the estates, therefore, showed a deficiency.

The question was whether the defendant was entitled to deduct these three incumbrances from the value of the estates.

It was held (by Mr. Justice Bray) on the 30th July, 1907, that the bonds were created *bonâ fide*, viz., "were real and genuine transactions intended to have full and real operation without any secret or covinous arrangement or reservation," and that being so the motive of the late duke in creating them was immaterial. That the duke received full consideration in money or money's worth wholly for his use and benefit. That what was done after the disentail of 1897 was done by the several parties of their own motion and without there having been any previous arrangement or understanding, and therefore the said bonds formed good deductions against the value of the estates.

The Crown appealed, and on the 24th June, 1908, the Court of Appeal (Cozens-Hardy, M. R., Farwell and Kennedy, L. JJ.) dismissed the appeal.

The Master of the Rolls, after stating the facts, said (*inter alia*):—

"It was said that these incumbrances were not created *bonâ fide* because the main, if not the sole motive of the transaction was to escape the payment of Estate Duty. He (the Master of the Rolls) could not satisfy himself that motive had anything to do with the consideration. '*Bonâ fide*' was a well-known expression and meant created in good faith, created not as a sham, or as a mere paper transaction, or collusively, or to defraud anyone, but the transaction must be intended to have, and having in truth, all the consequences that its form enabled it to have. In his view, it was quite unimportant to consider, when a mortgage was made by the owner of an estate, what his motive might be in effecting the mortgage. It might be that he wished to raise money for the benefit of his daughter on her marriage or to make a present to his son; it might be that when he wished to raise money one motive for so doing was to avoid Estate Duty. That was a motive which was not immoral and which was not illegal, and, so far as his Lordship knew, no objection could be raised to a transaction otherwise unobjectionable merely because a man wished to avoid Estate Duty. With great respect to the arguments advanced by counsel for the Crown, his Lordship was unable to attach the meaning which their arguments suggested should be attached to the words '*bonâ fide*.' He was content to adopt the language of Mr. Justice Bray on this point that the object of inserting them was to provide that the transaction should be a real and

genuine transaction intended to have full and real operation without any secret or covinous arrangement or reservation. Then it was said that the transaction was not wholly for the late duke's use or benefit. What was the fact? The bonds were really given as purchase-money for the absolute interest in the property which he thereby acquired. It was acquired by himself and for himself and for no one else. As a matter of fact, the late duke had borrowed money, no doubt to a comparatively small amount, on the fee which he had thus acquired. But in any case he had acquired the fee, and he had a good reason for so doing. He might have dealt with it in any way that he pleased, but, influenced by a motive which affected all landed proprietors almost without exception, he was minded to do that which he did to tie up the estate for another generation by the *mortis causâ* deed, which came into effect on his death. His Lordship was unable to see that, apart from any question of scheme or arrangement, these were other than incumbrances created *bonâ fide* for the late duke's own use and benefit. That being so, he thought that the Court would be wrong in putting a meaning on the words '*bonâ fide*' which had never been put on those words either in any other part of that Act or in any similar Act. In his opinion the judgment of Mr. Justice Bray was right, and the appeal should be dismissed."

On the 26th July, 1909, the House of Lords (Loreburn, L. C., and Lords Macnaghten and Atkinson) (Lords Collins and Shaw dissenting) dismissed the further appeal of the Crown, and held that the incumbrances created by the late Duke of Richmond were (1) *bonâ fide* created; (2) for full consideration in money or money's worth; (3) wholly for the deceased's own use and benefit; and (4) took effect out of his interest.

Sect. 57 of the Finance (1909–10) Act, 1910, was passed to prevent the deduction of incumbrances under similar circumstances in any future case.

Purely voluntary debts, therefore, cannot be deducted; for example, charitable subscriptions promised, but not paid. It would seem that such promised charitable subscriptions create no legal obligation on the person promising them. See

Re Cory, Kinnaird v. *Cory.*

In an administration action claims were made against the testator's estate (1) by the central branch of the Y. M. C. A. for 1,000 guineas and 500*l.*; (2) by the N. branch of the Y. M. C. A. for 500*l.*; and (3) by the T. Mission at J. for 20*l.*

In the first case a committee of the Y. M. C. A. had been appointed for the purpose of building a memorial hall to the memory of the founder of the institution. For this purpose 150,000*l.* was required, and the result of their efforts was that 85,000*l.* was raised or available, leaving a further sum of 65,000*l.* to be obtained. The testator, with the knowledge of these facts and that the committee had refrained from entering into the building contract until the 65,000*l.* could be obtained, promised a donation of 1,000 guineas to the building fund, and the committee, relying on this promise, entered into a building contract for erecting the hall. In July, 1908, the testator promised a further sum of 500*l.* towards the building of a hostel on condition that the building was raised by the end of the year, and the committee accordingly made a special appeal to the public at an expense of 40*l.* In the case of the claim by the N. branch of the Y. M. C. A., the testator promised a donation of 500*l.* (sending his cheque with the letter containing the promise) on the condition that Lord T. would promise a similar sum. This promise was given. Before the sums of 1,000 guineas and 500*l.* were paid to the central branch or the cheque for 500*l.* cleared by the N. branch the testator died. The third claim was for 20*l.* annual subscription promised by the testator, which he had previously paid to the T. Mission with the knowledge that the same was devoted to the support of two children in respect of whom expenses were incurred.

Held (by Eve, J., on 23rd October, 1912) that there was no consideration for any of the promises, and that they were *nuda pacta,* creating no legal obligation on the testator. See also

Lord Advocate v. *Gunning's Trustees.*

The deceased, in order to endow certain institutions, &c., bound himself to pay to them capital sums. He desired to retain the capital in his own hands, and to pay the interest only, and accordingly in 1890 he granted bonds to provide the amount. One of the bonds, dated 6th March, 1890, recited that the deceased had, in 1887, to commemorate the Jubilee of Queen Victoria, founded eleven post-graduation prizes at the University of Edinburgh of the value of 50*l.*, each recurring triennially, known as the O. Gunning Victoria Jubilee Prizes, and had bound himself to the university to provide the capital sum of 5,000*l.* for the purpose of paying the prizes and expenses of the examinations, and meanwhile had provided interest at 4 per cent. per annum on the said sum, and recited that the

university had, since 1887, published a scheme for the said prizes and advertised it, and that it was right and proper that the university should have from deceased a formal obligation for the said capital sum with interest. It was therefore witnessed deceased bound himself, his heirs, &c., to pay said capital sum to the university with interest at 4 per cent. per annum. The other bonds were in somewhat similar form. Payment could have been enforced at the first half-yearly term after their respective dates; but the grantees were content to receive the interest during the deceased's lifetime, and the capital sums remained unpaid at his death and were debts due by his executors.

He died in 1900, and in assessing Estate Duty on his estate, deduction of the capital sums was not allowed. Held by the Lord Ordinary (Lord Stormonth Darling) that the Commissioners were right, as these debts were not incurred for full consideration in money or money's worth, wholly for the deceased's use and benefit, nor were they property held by the deceased as trustee for the institutions named within sect. 2 (3) of the Finance Act, 1894.

Marriage is not a consideration in money's worth. See

Lord Advocate v. *Alexander's Trustees.*

By ante-nuptial contract of marriage, A. bound himself, his heirs and successors, to pay to the marriage contract trustees during the lifetime of his intended wife, in the event of her surviving him, (1) a free yearly annuity of 1,500*l.* and (2) a sum of 2,000*l.* for her behoof in lieu of household furniture, payable at the first term after his death; he also bound himself to aliment her from the day of his death until the first term of Whitsunday or Martinmas thereafter, suitably to his station in life. On her part, A.'s intended wife assigned to the trustees a sum of 11,000*l.* which she had in her own right, and also her contingent interest in a further sum of 6,000*l.* for the following purposes, viz.: payment of the income to the spouses and the survivor, division of the capital amongst the children, and, failing children, disposal as she might direct. She also accepted the provisions made by her husband in her favour as in full satisfaction of her legal rights in the event of her surviving him.

In his son's marriage contract A. bound himself, his heirs and executors, to pay to the trustees therein mentioned a sum of 30,000*l.* as a provision for the intended spouses and the

children of their marriage, declaring, however, that the trustees should not be entitled during his lifetime to demand payment of that sum, so long as he regularly paid 1,000*l.* per annum in full. On the other part corresponding provisions were made by the son's intended wife and her father in favour of the spouses and the children of the marriage.

It was held in Scotland on the 10th January, 1905, that on the death of A. (1) neither the provisions made by him in his own marriage contract, nor those undertaken by him in his son's marriage contract, were debts incurred "for full consideration in money or money's worth wholly for the deceased's own use and benefit" within the meaning of sect. 7 (1) of the Finance Act, 1894, and, consequently, that in determining the value of his estate for the purpose of Estate Duty, no deduction could be made in respect of these provisions, and (2) that no deduction could be allowed in respect of the obligation undertaken by him in his marriage contract to provide interim aliment for his widow.

The question of how the Estate Duty on the 30,000*l.* (covenanted to be paid to the son's marriage contract trustees) was to be borne was decided in *Alexander's Trustees* v. *Alexander's Trustees*, p. 245. See also

Lord Advocate v. *Warrender's Trustees.*

A father, in his son's marriage contract, bound himself in contemplation of the son's marriage and in consideration of a conveyance by the son's intended spouse in marriage settlement executed by her, to grant a bond over his estate in security of an obligation undertaken by him, in the said contract, to settle a sum of 30,000*l.* in trust for behoof of the son and on his (the son's) death for behoof of his widow in life rent and their issue absolutely. In the marriage contract the son released any claim for "legitim" that he might have against his father's estate.

It was held on the 9th January, 1906, by the First Division of the Court of Session in Scotland, that the bond was not a debt incurred "for full consideration in money or money's worth wholly for the deceased's own use and benefit" within the meaning of sect. 7 (1), and therefore that it could not be deducted in ascertaining the value of the father's estate for the purpose of Estate Duty. This affirmed the decision of the Lord Ordinary. See also

Re Gray, Gray v. *Gray.*

William Gray, on the marriage of his son, covenanted that his executors should, within six months of his death, pay 25,000*l.* to the trustees of such settlement, to be held on the trusts thereof. On his death his executors paid Estate Duty on all his estate without deduction for this 25,000*l.* It could not, of course, be deducted. (See sect. 7 (1) (a) of Finance Act, 1894.)

On a summons to determine the question whether the said sum should bear any part of the Estate Duty, it was held (by North, J.) that this sum was only a debt due from the testator's estate, which the executors were not allowed to deduct before paying duty, and that there was nothing in the Act to throw any part of the duty on the 25,000*l.*, and the whole must be paid out of the residuary estate. (See also *Re Dowling, Dowling* v. *Fenwick*, p. 206.)

This was followed in *In re Underwood.*

The actual proportion due at the death of an annuity which the deceased had voluntarily covenanted to pay may be deducted, although the capitalised value thereof cannot.

Where the deceased covenanted to charge his estates with a capital sum to the trustees of his daughter's marriage settlement, and actually mortgaged such estates to the trustees to secure it, no deduction can be taken for such mortgage, but if he covenanted to pay a capital sum to such trustees and mortgaged his estates to a third party, and he himself received the mortgage money and paid it to the trustees, it would seem such mortgage can be deducted. The mortgage was created for money's worth for the deceased's own use, and what he does with the money afterwards is immaterial.

Where the deceased by a post-nuptial settlement covenanted that his executors or administrators should, within six months of his death, pay a capital sum to the trustees thereof to be held on the trusts declared in consideration of some other person paying him a capital sum of the same amount on the execution of the settlement, the covenanted sum can be deducted against the covenanter's estate on his death, since such debt was *bonâ fide* created for full consideration in money wholly for the deceased's own use. The covenanted sum is seemingly not liable to Estate Duty, as passing under the settlement under sect. 2 (1) (d), since the deceased did not provide it—it was, in fact, provided by the other person. *Att-Gen.* v. *Murray* apparently prevents Estate Duty attaching to such sum under sect. 1.

Where a husband on his marriage, in consideration of the marriage and of the payment over to him of his intended wife's fortune, covenants that his representatives shall on his death pay a fixed sum to the marriage settlement trustees to be held on the trusts thereof, it would appear that no deduction can be claimed against the Estate Duty on his death in respect of the covenanted sum, the real consideration being the marriage. (See *Lord Advocate* v. *Alexander's Trustees*, p. 147.)

Where the deceased has voluntarily granted a perpetual yearly rent-charge issuing out of his land, it would seem this cannot be deducted before arriving at the value of such land for Estate Duty purposes, because the rent-charge, quâ the person by whom it is created, is an incumbrance.

"**Nor for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained.**"

These debts refer to surety debts and the like for which deceased is not primarily liable, and the allowance can only be made for the amount for which no reimbursement can be made.

Example:—

If the deceased was surety for A. for a sum of 100*l.*, and deceased's estate was called upon to pay the same, and his executors sue A., but only recover 60*l.*, then 40*l.* only can be deducted against A.'s estate.

"**More than once, &c.**"—These words hardly seem to require explanation.

"**And any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.**"

The debt must be deducted against the property on which it is actually charged. For example, if it is a mortgage of Blackacre it should be deducted against the value of Blackacre, and any deficiency in the value of Blackacre may be deducted against the deceased's personal estate, unless the mortgaged property and the residuary personal estate pass to the same person, in which case he can deduct the mortgage against the personal estate or real estate. Locke King's Act, 17 & 18 Vict. c. 113, and the amending Acts 30 & 31 Vict. c. 69, and 40 & 41 Vict. c. 34, enacted, that unless the testator had declared a contrary intention, the land itself should, as *between the different persons* claiming through or under him, be primarily

liable, but this would not apply where they both go to the same person.

If the deceased died domiciled in the United Kingdom possessed of real estate (subject to a mortgage) abroad and personal estate abroad, which he devised and bequeathed to the same person, it seems such person may pay the mortgage debt out of, and therefore deduct it against, the foreign personal estate, thereby reducing the amount of personal estate liable to Estate Duty.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate Duty is paid; and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

If the debts were contracted to be paid *in* the United Kingdom, or charged on property within the United Kingdom, they may be deducted, in the first instance, from the English assets or property so charged, whether the deceased was domiciled in the United Kingdom or not. If not so contracted to be paid or so charged, these debts must, in the first instance, be deducted from the value of the deceased's personal estate abroad in respect of which *Estate Duty is paid*. This can only apply to the foreign assets of a deceased person *domiciled in* the United Kingdom, because Estate Duty would not be payable on the foreign assets of a person *domiciled out* of the United Kingdom.

Where, however, the foreign assets are exhausted by foreign debts, although such debts cannot, in the *first instance*, be deducted against the property in the United Kingdom, yet, if the Commissioners are satisfied of such insufficiency, they may

allow a return of Estate Duty in respect thereof, whether the deceased's domicile is British or foreign.

If there is no foreign property, but a debt due to a person resident abroad, the debt will be allowed against the British assets in the first instance to save the trouble and expense of a corrective affidavit.

When the deceased dies possessed of British and colonial or foreign assets and leaves debts in the United Kingdom, and in the colony or foreign country, the British debts should be deducted primarily against the British estate, and the deficiency, if any, against the colonial or foreign asset.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case 5 per cent. on the value of the property.

The allowance is only for the difference between the actual expense incurred in realising such property and the probable expense of realising it, had it been situate in the United Kingdom, this amount being the "*additional expense.*" In any case it is not to exceed 5 per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

The phrase "foreign country" would appear to be used in contradistinction to British possession. The Commissioners have to be *satisfied* that the duty is payable, not necessarily paid, and it can then be deducted against the value of the property, but not against the Estate Duty itself, as in cases which fall within sect. 20 (1).

Property in a British possession which does not fall within sect. 20 (1) would appear to have the benefit of sect. 7 (4); if

this were not so, such property would be in a worse position than property in a foreign country, which could hardly be the intention of the Legislature.

It is considered that this sub-section extends to any death duty payable in any British possession to which the provisions of sect. 20 of the Finance Act, 1894, have NOT been applied, in respect of shares in companies which, according to English law, are situate in the United Kingdom, but the payment of such death duty is, in the terms of the law of the British possession, a condition precedent to the transfer of the shares of the company. Shares in certain companies registered in London, but carrying on business in the Transvaal or the Cape of Good Hope, are examples.

Where a testator died domiciled in the United Kingdom possessed of moveables situate in a foreign country, and he bequeathed them to a legatee for life, and then to others, the death duty payable in the foreign country on the death of the life tenant is considered to be payable "by reason of" the testator's death, so that an allowance therefor may be made under this sub-section on the testator's death. This is in addition to the allowance for the Probate (or Estate) Duty and Legacy Duty (on the life tenant's interest) actually payable on the testator's death.

It may be mentioned that under the Transvaal Estate Duty Act, 1909, which came into operation on 1st July, 1909, all securities (other than bearer securities) of any company carrying on business in the Transvaal, notwithstanding the fact that the company is not registered in the Transvaal, or that the deceased owner was not resident therein, are liable to Transvaal Estate Duty varying from 2 to 10 per cent. upon the death of the holder, in the event of the total net value of the deceased's estate in the Transvaal, including such securities, exceeding 2,000*l*. The provisions of sect. 20 of the Finance Act, 1894, have not been applied to the Transvaal.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased:

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property,

the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

By sect. 60 (1) of the Finance (1909–10) Act, 1910, the above proviso is repealed in the case of any person dying on or after the 30th April, 1909, except—

(a) In the valuation of property consisting of a tenancy from year to year;

(b) For determining the gross or net value of property for the purpose of sect. 16 of the Finance Act, 1894 (see sect. 61 (1) of the 1910 Act); and

(c) Cases where the interests, created prior to 30th April, 1909, of mortgagees or purchasers are affected. (See sect. 64 of the 1910 Act.)

By sect. 60 (2) of the 1910 Act, in the case of any person dying on or after the 30th April, 1909, the Commissioners shall fix the price according to the market price at the time of the death, and without making any reduction in the estimate on the assumption that the whole property is to be placed on the market at one and the same time, but they must take into account any depreciation caused by the death of the deceased.

By sect. 18 of the Finance Act, 1911, in estimating the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connection with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

Since the advent of motor cars quite high rents may be obtained for cottages (intended only for workmen) situated amidst beautiful and picturesque surroundings to be used as week-end residences. This section prevents such cottages being valued on the capitalised value of the rents that might be obtained by letting the cottages for the summer or week-end residences of persons above the class of labourers or workmen.

"**The principal value of any property**" is the price it would fetch if sold in the open market at the time of the deceased's

death, and not at the time of the grant of representation as it was for Probate Duty purposes. The price it would fetch is the gross price without deduction for the expenses of realisation.

If, in order to obtain a higher price than could be obtained locally where the property is situate at the death, extra expenses would have to be incurred in selling elsewhere, such extra expenses can, it would seem, be deducted from such higher price so obtained.

To ascertain the price in the open market consideration must be given to the fact that the property has a special value to one particular person, who would be willing to give substantially more than any other person. (See *Inland Revenue Commissioners* v. *Clay* and *Inland Revenue Commissioners* v. *Buchanan*.)

The saleable value of an undivided fractional share of a real or leasehold estate may be less than the same fractional share of the saleable value of the entirety of such estate. The owner of an undivided share is bound to incur extra expense in consulting with the owners of the other shares in all matters relating to the developing and letting of the property which has a depreciating effect on the value of the share.

This was the view of the referee in *Cust* v. *Inland Revenue Commissioners*. A deduction of 5 per cent. would seem to be reasonable in the case of one property and 10 per cent. in the case of scattered properties.

Example :—

If the saleable value of Blackacre sold as a whole is 20,000*l*., the saleable value of one-fifth of Blackacre is not necessarily 4,000*l*., but usually will be found to be some less sum, say, 3,800*l*.

The value of boycotted lands in Ireland came before the Courts in

De Burgh v. *Inland Revenue Commissioners*.

In this case the successor claimed that the lands were untenanted and, as such, boycotted and therefore had no saleable value; there was an appeal from the decision of a referee who had fixed the value at 4,300*l*.; the Crown also appealed and contended the value was 5,450*l*. Pim, J., held (on 6th March, 1917) that the referee's decision should not be disturbed; that he could not understand that such a holding could not have a selling value, and that there was no evidence that there was any real boycotting in 1912, at the date of the deceased's death.

The principal value of a holding purchased under the Irish

Land Purchase Acts is the price which the property would fetch if sold in the open market at the time of the death of the deceased, subject to the annuity payable to the Land Commission. (See *Inland Revenue Commissioners* v. *Cookman*, p. 141.)

The saleable value is the price that will be obtained if the property is sold in the most advantageous manner, for instance, in lots rather than in one block. See

Ellesmere (Earl) v. *Inland Revenue Commissioners.*

Certain properties in Northamptonshire which passed on the death, on the 13th July, 1914, of the third Earl of Ellesmere were sold in one lot by the succeeding Earl after being well advertised for 68,000*l.*, and were subsequently sold in lots by the purchaser from him at a sum exceeding that figure.

Estate Duty was offered on the 68,000*l.*, but the Commissioners required the duty to be paid on the basis of the prices realised on the sub-sales, for the reason that as the estates consisted of a miscellaneous collection of property of various descriptions, not all of it even lying together, it was unsaleable in one lot to anyone but a speculator buying for division and resale at a profit.

Held by Sankey, J. (on 5th July, 1918), that the fact of the estate consisting of miscellaneous property not all lying together was evidence on which a referee, to whom the value of the estate for the purposes of Estate Duty was referred, might find that the price which it actually fetched was not the market price within the meaning of sect. 7 (5) of the Finance Act, 1894, and sect. 60 (2) of the Finance (1909–10) Act, 1910, but the true market price was the aggregate of the prices which the several parts would have fetched if the estate had been broken up and sold in suitable lots. That a person who appeals under sect. 60 (3) of the Finance (1909–10) Act, 1910, is in a position of a plaintiff, and notwithstanding that he is partially successful in his appeal the referee has jurisrdiction to order him to pay the costs of the appeal.

The Commissioners may ascertain the value as they think fit (see sect. 7 (8)), but the parties must furnish a statement of their valuation and how it is arrived at (see sect. 8 (14)), the true criterion being always under this sub-section what it will fetch in the open market.

The question of the value of all real and leasehold property is now always referred to the Land Valuation Department set

up in connection with Part I. of the Finance (1909-10) Act, 1910.

As to the value of shares with a restricted market, see

Re Henry Jameson (deceased), Att.-Gen. v. *Jameson and others.*

The claim in this case was for additional Estate Duty in respect of 750 shares in John Jameson and Son, Ltd., a private company incorporated under the Joint Stock Companies Acts.

The par or fair value as fixed by the articles of association of the company, viz., 100*l.* each, was returned in the Inland Revenue affidavit as the value of each share, and it was contended by the defendants (the executors of the deceased) that, owing to the restrictive clauses contained in the company's articles of association as to the sale and transfer of the company's shares, Estate Duty was not payable on a greater amount than the "par value" as returned in the affidavit.

The Commissioners of Inland Revenue sought a declaration that the value of the shares should be ascertained without regard to these restrictive clauses.

The King's Bench Division, Ireland (Kenny and Boyd, JJ.), on the 13th February, 1904, decided in favour of the defendants, the Lord Chief Baron Palles dissenting.

The Court of Appeal in Ireland (Ashbourne, L. C., Fitzgibbon, Walker, and Holmes, L. JJ.), on the 19th December, 1904, gave judgment varying the order in the Court below in the favour of the Crown, by declaring that the principal value of the shares in the company was to be estimated at the price which, in the opinion of the Commissioners of Inland Revenue, they would fetch if sold in the open market, on the terms that the purchaser should be entitled to be registered as the holder of the shares.

Shares may have a minus value if a transferor would be required to pay in order to have the shares taken over by some other person; the value of the estate in such a case is to be treated as diminished by that amount for the purpose of Estate Duty.

As to the method of ascertaining the value of freehold "tied" beer-houses and public-houses, this is set out in great detail in the cases of *Ex parte Ashby's Cobham Brewery Company, Limited, Re The Crown, Cobham*; and *Ex parte Ashby's Staines Brewery Company, Limited, Re The Hand and Spear, Woking*, 95 L. T. 260; [1906] 2 K. B. 754, which should be consulted hereon.

The value of a share in a partnership business is (per Lindley on Partnership, 8th ed., p. 402) the partner's proportion of the partnership assets *after* they have been all realised. It follows, therefore, that from the gross value of the partnership business a deduction may be made in respect of (a) the costs of realisation of the partnership assets by the surviving partner; or (b) the costs of an action by the legal personal representative of a deceased partner to take the partnership accounts.

The value is the value *at the death.* See

Lord Advocate v. *Marr's Trustees.*

An Aberdeenshire farmer (who died on the 7th June, 1904) had a herd of shorthorn cattle which were included in the inventory of his estate recorded on the 19th July, 1904, at the value of 9,031*l.* according to a valuation then taken. The herd realised on sale in October following 17,722*l.* 17*s.*, and the Crown claimed additional Estate Duty on the difference between the two sums, with an allowance for the expenses of the keep, &c., of the herd.

The defence was that there had been a natural increase in value during the interval, and that the market had risen.

The Court (January, 1907) decided against the Crown.

The Lord Ordinary said (*inter alia*): "The property must be valued at the date of the death, though it might be imprudent to bring it to the hammer until some months later; the Revenue is not entitled to have a valuation as at the time when the best market might be anticipated, or a valuation based on the result of the actual sale at that period."

There are certain exceptions from the rule that Estate Duty is to be paid on the saleable value. (See sect. 5 (5) as to lands settled by Act of Parliament or Royal grant, and sect. 7 (7) as to the value accruing by the cesser of an interest.)

"**Agricultural property**" means (see sect. 22 (1) (g)) agricultural land, pasture, and woodland, and also includes such cottages (see sect. 18 of the Finance Act, 1911, as to the value to be placed on the cottages), farm buildings, farmhouses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property.

Sporting rights separately let from the land are separately assessed. No separate value is to be placed on timber ripe for cutting apart from the land.

It must be observed that where the deceased died on or after the 30th April, 1909, timber, trees, and wood are separately

valued in accordance with sect. 61 (5) of the 1910 Act, as amended by sect. 9 of the Finance Act, 1912, and the Estate Duty is not payable until the timber, &c., is sold.

"**Where no part of the principal value is due to the expectation of an increased income from such property.**"

This refers to such increased income as could be derived from letting the property for building purposes, brick-making, stone quarries, and the like. In these cases the sub-section does not apply, and the property is to be valued in the usual way.

See *Inland Revenue Commissioners* v. *Holloway's Executors* for an example of a case where a farm was held by the referee to have a value in excess of the ordinary agricultural value, and also as to when oral evidence can be given on the hearing of an appeal from a referee.

"**Shall not exceed twenty-five times.**"—The value may be less, but cannot be more, than twenty-five years' purchase.

"**The annual value as assessed under Schedule A of the Income Tax Acts.**"

By the Income Tax Act, 1842, s. 60:—

> The annual value of lands, tenements, hereditaments, or heritages charged under Schedule A shall be understood to be the rent by the year, at which the same are let at rack rent, if the amount of such rent shall have been paid by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; but if the same are not so let at rack rent, then at the rack rent at which the same are worth to be let by the year.

The annual value is the gross assessment and not the reduced assessment for collection under sect. 35 of the Finance Act, 1894. If the property is unlet and not assessed to income tax, the annual value taken as a basis of valuation is the gross value for the poor rate.

"**After making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853.**"

The deductions allowed in the assessment of agricultural property under Schedule A are: Land tax, unredeemed drainage, fencing, and embankment rates, the outlay on the average of the preceding twenty-one years upon erecting and maintaining sea walls, and if paid by the owner, the rates and taxes usually borne by the tenant.

The deductions allowed under the Succession Duty Act, 1853, are head, chief, or quit rents, ground rents, fire insurance,

repairs, tithes, fines, fees, or other payments incident to tenure and the consideration given for compulsory enfranchisement.

"**Expenses of management.**"—These were not allowed under the Succession Duty Act. Five per cent. is the maximum, the rule being to determine the average amount.

Since sect. 18 (2) of the Finance Act, 1894, enacts that the annual value of agricultural property for the purpose of Succession Duty shall be arrived at in the same manner as for the purpose of Estate Duty, it follows the expenses of management (not exceeding 5 per cent.), if actually incurred, can be deducted in Succession Duty accounts from the gross annual value, whether the successors take for life or in fee, if the deceased died prior to the 30th April, 1909.

Sect. 60 (1) of the 1910 Act abolishes the proviso to sect. 7 (5) of the 1894 Act in the case of any person dying on or after the 30th April, 1909.

Expenses of management could not be deducted in Succession Duty accounts if the property was not agricultural even prior to the 30th April, 1909.

If the agricultural property is subject to a mortgage, the mortgage is to be deducted from the value of such property as ascertained under this sub-section, although such mortgage may exceed such notional or taxable value.

Att.-Gen. (*Ireland*) v. *Robinson.*

It was held in this case that in estimating the principal value of agricultural land in the occupation of a tenant, where no part of such principal value is due to the expectation of an increased income, the proviso to sect. 7, sub-sect. 5, applies, and on the death of such tenant the principal value is limited to "twenty-five times the annual value, as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed under that assessment, and are allowed under the Succession Duty Act, 1853, and making such a deduction for expenses of management, not exceeding 5*l.* per cent. of the annual value so assessed." Those deductions included: (1) The head rent; (2) so much of the poor rate as would have been deductible by a tenant who held the farm at a rent equal to the valuation, viz., half the rate for the standard year [within the meaning of 61 & 62 Vict. c. 37 (the Local Government (Ireland) Act, 1898)] on the difference between 180*l.* 15*s.*, the rateable valuation, and 170*l.*, the head rent—in other words, the poundage rate on 10*l.* 15*s.*; (3) expenses of

management, but no deduction could be allowed in respect of the county cess.

Property subject to a perpetual annuity.—The proper course to ascertain the saleable value of property subject to a perpetual annuity or chief rent is, first to value the property as if there were no annuity or chief rent, and to deduct from such value the true capital value of the annuity, it being obvious that the chief rent would generally on a sale realise a greater number of years' purchase than would the property itself out of which the chief rent issued.

(6) Where an estate includes an interest in expectancy, Estate Duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate Duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of Estate Duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of Estate Duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

"**An interest in expectancy,**" by sect. 22 (1) (j), includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases.

In order to determine the *rate* of the Estate Duty in respect of the *rest* of the estate, the value of the reversion is the value at the date of the deceased's death, and if the Estate Duty on the reversion is paid at the same time, this is the rate at which the reversion will pay, but if payment on the reversion is postponed until it falls into possession, then the rate is calculated according to its value when in possession, added to the value of the rest of the estate as previously ascertained. See

Re Colonel Eyre (deceased).

Colonel Eyre died in 1904 entitled to a reversion under the will of his father, General Eyre, who died in 1889, expectant on the death of his sister, M. Eyre.

The executors of the colonel exercised their option under sect. 7 (6), and postponed payment of the Estate Duty on the reversion until it should fall into possession. M. Eyre died in February, 1906, when such reversion fell into possession. The interest of the colonel in expectancy was valued at his death at about 13,700*l.*, when it fell into possession it was valued at about 29,000*l.* The Commissioners claimed Estate Duty from Colonel Eyre's executors on the reversion at its value when in possession, viz., on the 29,000*l.*, whilst the executors claimed that it was payable only on the 13,900*l.*

Bray, J., on 11th December, 1906, gave judgment for the Crown.

If a reversion to which the deceased was entitled falls into possession between the date of the deceased's death and the date of the delivery of the Inland Revenue affidavit or account, it may still be brought into the affidavit or account at its reversionary value at the time of the deceased's death, because the parties cannot be said to have exercised their option. But if the reversion has been brought into the affidavit for rate only at its reversionary value, the parties cannot, after the reversion has fallen into possession, then elect to pay on it at its reversionary value, having already exercised their option.

If the reversion has been brought into the affidavit for rate only, and before the reversion has fallen into possession it is desired to pay the Estate Duty thereon, application must be made to commute the duty.

An interest in expectancy does not include the reversion expectant on the determination of a lease. The principal value of such property is the price it will fetch in the open market, having regard to the present rent plus the reversion to the fee or other interest.

A policy of insurance belonging to the deceased on the life of another is not an interest in expectancy, but an inchoate chose in action, and should be valued under sub-sect. 5. The value of such a policy is somewhat more than the surrender value, varying according to the age of the assured.

If a contingent reversion is included in the Inland Revenue affidavit, a fair market value should be put on it, and not merely a nominal sum. See the following case, which, although

a decision on Inventory Duty, would seem also to be applicable to Estate Duty.

Lord Advocate v. *Pringle.*

The facts are as follows:—

Janet Pringle died in 1858, entitled to a contingent interest under an agreement made by herself and four others whereby the five persons agreed that if any of them should become entitled as next of kin of a lunatic to the estate of such lunatic, the said five persons should share the estate equally.

Andrew Pringle, a brother and one of the next of kin of Janet, delivered an inventory of her estate in February, 1863, and included her interest under the said agreement, which he stated "may at present be valued at 20*l.*," and he paid a Stamp Duty of 10*s.*

The lunatic died in 1874, and Janet Pringle's share of his estate, by virtue of the said agreement, amounted to over 37,000*l.*, and the Commissioners at first claimed further Inventory Duty on this sum, but it transpired in the course of the proceedings, that before Andrew Pringle delivered the said inventory of Janet's estate, he had sold his own right and interest under the agreement, and also his moiety of Janet's share for an immediate life annuity of 350*l.* and a future payment of 3,000*l.*, and thereupon the claim of the Crown was limited to Inventory Duty on the value of her expectancy at the time when the inventory was sworn, to be calculated on the basis afforded by the sale.

The Lord Ordinary gave judgment in favour of the Crown, and this decision was adhered to by the full Court, on the ground that the valuation in the original inventory was merely nominal, and even if intended to be otherwise it was plainly a totally inadequate valuation as at that time.

If the deceased's reversion in settled property at the time of his death is liable to be defeated by the exercise of an overriding, limited, or general power of appointment, it is considered to have no saleable value (under sect. 7 (5) of the Finance Act, 1894), and therefore is not liable to Estate Duty on his death, even though it may ultimately fall into his estate and become actually payable to his legal personal representative.

Example:—

A., by his marriage settlement in 1872, settled 10,000*l.* on himself for life (died 1890), and then on his wife B. for life (died 1912), and then to their children as A.

and B. should jointly, or as the survivor should by deed or will appoint (neither power exercised), and in default to their children equally. There were three children, C., D., and E. C. died in 1911 intestate and a bachelor, leaving (apart from his reversion) free estate valued at 600*l.* net. Letters of administration were obtained to his estate in 1911, and Estate Duty then paid at 2 per cent. on the 600*l.* under sect. 16 (3) of the 1894 Act.

Estate Duty is payable under the 1872 settlement on B.'s death on the 10,000*l.*

No further Estate Duty and no Legacy Duty is payable under C.'s intestacy in respect of his one-third share of the 10,000*l.*

The Legacy Duty is exempted by the provisions of sect. 16 (3) of the 1894 Act, since C.'s estate (including the value at his death of the reversion) is under 1,000*l.*

If C.'s estate, apart from the reversion, should be over 1,000*l.* net, then, although no Estate Duty is payable under C.'s intestacy on the reversion, Legacy Duty is payable at 5 per cent. on the shares thereof passing to D. and E., and if C.'s estate should fall within sect. 58 (2) of the 1910 Act, Legacy Duty at 1 per cent. would be payable on the share passing to C.'s mother B.

In cases where property passes on deceased's death (as the first life tenant) under a settlement, and the deceased is also entitled absolutely in reversion to such property expectant on the death of a second and surviving life tenant, it is considered that Estate Duty is payable at once on the capital of the property as passing under the settlement. (See, however, the case of *In re Avery, Pinsent* v. *Avery*, p. 196, but the Crown was not represented in that case.)

Estate Duty cannot be levied more than once on the same death. (See sect. 7 (10).)

If a reversion is included in a settlement, Estate Duty is not payable on the death of the life tenant under that settlement unless the reversion had previously fallen into possession. Sect. 5 (3) is considered to apply. (See p. 118.)

Example :—

A. settles 20,000*l.* to which he is entitled on the death of B. (living) on himself for life (dies 1905), and on his death to C. absolutely. B. survives A., then Estate

Duty is not considered to be payable on the 20,000*l.* on A.'s death, his interest having failed or determined before it became an interest in possession.

With reference to cases under sect. 33 of the Wills Act, 1837, where property bequeathed by a father to his son, who predeceased him, is deemed to pass under the will or intestacy of the son, see *Re Scott*, p. 19.

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of a deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

"The value of the benefit accruing or arising from the cesser of an interest."

This sub-section supplies the method to be used in calculating the value for duty of cases falling under sect. 2 (1) (b), such as the cesser of annuities, rent-charges, and the like.

In *Earl Cowley* v. *Commissioners of Inland Revenue*, Lord Macnaghten said, this sub-section was the proper one for valuing the cesser of an interest in property, which did not pass.

The case of *Lord Advocate* v. *Maclachlan* (see p. 30) also shows that it is the interest of the deceased ceasing, valued under this section, which is taxable under sect. 2 (1) (b), and not the benefit of the successor. The House of Lords was of the same opinion in *Att.-Gen.* v. *Lord Montagu*. (See p. 11.)

Example:—

A. (died 1892) devised Blackacre to pay 100*l.* per annum to B. for life, and on B.'s death to pay 100*l.* per annum to C., and, subject thereto, to D. in fee. On B.'s death Estate Duty is payable by D. on the cesser of the 100*l.* per annum, notwithstanding the 100*l.* annuity to C.; but D. will be entitled to raise the Estate Duty by mortgage of Blackacre and deduct the interest on the charge from C. during his life. (See *Re Parker-Jervis*, *Salt* v. *Locker*.)

"**If the interest extended to the whole income of the property**," the value is the principal value as ascertained by sub-sect. 5, viz., is the full saleable value if sold in the open market.

"**If the interest extended to less than the whole income**," the value is the principal value of an addition to the property equal to the income to which the interest extended.

Example :—

Assuming the deceased had an annuity of 100*l.*, issuing out of Blackacre, which is valued at 20,000*l.*, and has a net rental of 1,000*l.* per annum, then the principal value of an addition to the property equal to 100*l.* a year is 2,000*l.*

See *Re Parker-Jervis, Salt* v. *Locker*, where the same principle was applied in valuing a jointure for Estate Duty.

The following case also is on this point.

Lord Advocate v. *Henderson's Trustees.*

James Henderson died in 1882, leaving a will under which his widow was entitled to (in events) 950*l.* per annum for her life, of which sum 750*l.* was a charge on heritable estate.

The widow died in 1903, and thereupon Estate Duty became payable on the cesser of the 750*l.* annuity, the proportion of the 950*l.* that was attributable to heritable estate.

In the Estate Duty account, the net annual value of the heritable property, after deduction of feu duties, rates and taxes, was shown as 8,615*l.* 8*s.* 9½*d.*, and on the basis of fourteen years' purchase of this, the principal value of the heritable property was stated as 120,630*l.* 1*s.* 1*d.* Deducting from this 120,630*l.* 1*s.* 1*d.* bonds on the property amounting to 80,173*l.* 11*s.* 4*d.*, the net principal value was shown as 40,456*l.* 9*s.* 9*d.*, and by deducting the interest (2,181*l.* 15*s.*) on the bonds from the annual value of 8,615*l.* 8*s.* 9½*d.*, the actual net annual return was shown as 6,433*l.* 13*s.* 9½*d.* On the basis of these figures the dutiable value of the share of the property appropriate to the 750*l.* annuity was brought out at 4,717*l.* 4*s.* 6*d.*

For the Revenue, it was contended that as the annuity or interest ceasing extended to less than the whole income of the property, the value of the slice fell to be ascertained, by the rule contained in sect. 7 (7) (b) of the Finance Act, 1894, and that in cases falling under that sub-section, deduction for bonds under the provisions of sect. 7 (1) was not admissible. The

authority for this proposition is found in *dicta* of the judges in the case of *Lord Advocate* v. *Maclachlan* (1899), 1 Fraser, 917. Accordingly it was argued, that as the principal value of the property, irrespective of the bonds, was taken at fourteen years' purchase of its net annual value, the dutiable value of the addition to the property appropriate to the annuity of 750*l.* was fourteen years' purchase of it, or 10,500*l.*

The Lord Ordinary in Scotland, on the 18th May, 1905, found that "in estimating, for the purposes of Estate Duty, the value of the benefit, arising from the cesser of the late Mrs. Henderson's life rent annuity of 750*l.*, payable out of the heritable property forming part of the trust estate, the principal value of an addition to said property, equal to the said annuity, must, under sect. 7 (7) (b) of the Finance Act, 1894, bear the same proportion to the market value of the said property, at Mrs. Henderson's death, after deducting the burdens thereon allowed by sect. 7 (1) of the said Act, as the amount of the said annuity bore to the whole free income of the said property at the same date."

But on appeal the First Division recalled (reversed) the Lord Ordinary's judgment, and found that the value of the benefit arising from the cesser of the said annuity was, under sect. 7 (7) (b) of the said Finance Act, 1894, the principal value of an addition to the property equal to the said annuity, and was properly valued at fourteen years' purchase of the said annuity.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate Duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

Subject to the general rules laid down in the Act, the Commissioners may ascertain the value, as they think fit, and may engage any person to inspect and value for them; they do, of course, appoint experts where necessary.

The value of all real and leasehold property is now fixed by the Land Valuation Department set up under Part I. of the 1910 Act.

The person having the custody of the property is bound to allow the inspection.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

The Commissioners are only called upon to pay the costs of a valuation if it is made by a person "*named by them.*"

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death.

Where the property passes on the deceased's death under a settlement to a surviving tenant for life, and subject thereto to the deceased absolutely—and this reversion passes under the deceased's will or intestacy, it is beyond doubt that Estate Duty is payable only once on the capital value, whether the duty is paid under the settlement or partly under the settlement and partly under the will or intestacy, but it is considered Estate Duty is payable on the capital of the property as passing under the settlement, as explained on pp. 99 and 198.

8.—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery and repayment of Estate Duty, and for the exemption of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

"**The existing law and practice, &c.**"—The existing law and practice relating to death duties are incorporated generally for the purposes of the collection, recovery, and repayment of Estate Duty.

No probate or letters of administration can be granted without they bear a certificate in writing showing that the Inland Revenue affidavit of the deceased's estate has been delivered, and duly stamped, and stating the gross value of the estate shown by the account. . (See sect. 30 of the Customs and Inland Revenue Act, 1881.)

In administration proceedings the Court has to provide for the payment of duties. (See sect. 25 of the Legacy Duty Act, 1796 (36 Geo. 3, c. 52), and sect. 53 of the Succession Duty Act, 1853.)

By sect. 40 of the Customs and Inland Revenue Act, 1881, any person who ought to obtain probate or letters of administration and who neglects to do so is liable for double the duty.

In *Watherston's Trustees* v. *The Lord Advocate*, this subsection was considered only to incorporate *existing procedure* as to repayment, and not to affect the question of liability for duty. Sect. 10 provides the necessary procedure in nearly all cases where a return of Estate Duty is claimed.

"**For the exemption of the property of common seamen, marines, or soldiers, &c.**"—The effects of such persons were exempt from Probate Duty. (See 55 Geo. 3, c. 184, sch., Part III.)

All the property of such persons is exempted from Estate Duty.

"Soldiers" are to be construed as including "airmen." (See sect. 13 of the Air Force (Constitution) Act, 1917, and the Order in Council of the 4th June, 1918, "The Air Force (Application of Enactments) (No. 3) Order, 1918," made thereunder.)

Since the property of these persons is exempt from Estate duty, it follows there can be no claim for Estate Duty on the death of a life tenant under the will of such.

The exemption only applies to the rank and file in the army and not to a sergeant, but a common seaman includes a petty officer, non-commissoned officer, or any person forming part of the complement of any vessel and not being an officer, *i.e.*, a commissioned, warrant, or subordinate officer, or assistant engineer. (See the Navy and Marines (Property of Deceased) Act, 1865, s. 2.)

A lance-sergeant is a corporal performing the duties of a

sergeant, and therefore the estate of a lance-sergeant is entitled to exemption under this sub-section.

The death need not have been during actual warfare. This exemption is extended in certain cases of persons dying in consequence of wounds inflicted, accident occurring, or disease contracted within three years before death while on active service against an enemy. (See Finance Act, 1900, s. 14, the Death Duties (Killed in War) Act, 1914, and the amending Acts there mentioned.)

"**For the purpose of payment of sums under 100*l*. without requiring representation.**"—The following statutes are the principal ones conferring power to pay over sums without representation:—

(1) 3 & 4 Vict. c. 110, s. 11, as to sums in Loan Societies not exceeding 50*l*.

(2) 26 & 27 Vict. c. 57 (the Regimental Debts Act, 1863), where the personal property of any soldier dying on service, after payment of the preferential charges mentioned in the Act, does not exceed 100*l*.; but this Act was repealed by 56 Vict. c. 5 (Regimental Debts Act, 1893), which provided that the residue of the personal estate of any person subject to military law, after payment of the preferential charges mentioned in the Act, may be distributed without taking out representation to the deceased if such residue does not exceed 100*l*.

(3) 28 & 29 Vict. c. 111, s. 6 (Navy and Marines (Property of Deceased) Act, 1865), as to the amounts standing to the credit of any deceased officer, seaman, or marine in the books of the Admiralty.

(4) 31 & 32 Vict. c. 90 (Public Departments Payments Act, 1868). Army prize money not exceeding 100*l*., arrears of civil pay, or pensions and civil and military allowances chargeable to Army votes of like amount.

(5) 37 & 38 Vict. c. 42, s. 29, as to deposits in building societies not exceeding 50*l*. in the case of the intestacy of a deceased depositor.

(6) 38 & 39 Vict. c. 60, s. 15. } Sums in friendly societies.
46 & 47 Vict. c. 47, s. 3. }
39 & 40 Vict. c. 22, s. 10. } Sums in trade unions.
46 & 47 Vict. c. 47, s. 3. }
56 & 57 Vict. c. 39, s. 27. { Sums in industrial and provident societies.

If not exceeding 100*l*., may be paid to nominees of a deceased member without administration.

But 59 & 60 Vict. c. 25, s. 59 (Friendly Societies Act, 1896), enacted :—

When the principal value of the estate, in respect of which Estate Duty is payable, of any person entitled to make a nomination under this Act exceeds one hundred pounds, any sum paid under this Act without probate or letters of administration, shall, notwithstanding such nomination or payment, be liable to Estate Duty as part of the amount on which that duty is charged, and the trustees of the society or branch may, before making any such payment, require a statutory declaration by the claimant or by one of the claimants, that the principal value of that estate, including the sum in question, does not, after deduction of debts and funeral expenses, exceed the value of 100*l.*

And sect. 107 of that Act repealed 38 & 39 Vict. c. 60, and 46 & 47 Vict. c. 47 in part.

See also 3 & 4 Geo. 5, c. 31, ss. 5 & 6 (the Industrial and Provident Societies (Amendment) Act, 1913).

(7) 50 & 51 Vict. c. 40 (the Savings Bank Act, 1887), as to deposits in savings banks not exceeding 100*l.*

See the Post Office Savings Bank Regulations, 1910 (St. R. & O. No. 569), clauses 73 and 81, and the Trustee Savings Bank Regulations, 1900 (St. R. & O. No. 629), clauses 17 and 25.

(8) 50 & 51 Vict. c. 67, s. 8, as to sums not exceeding 100*l.* due from a public department in respect of any civil pay, superannuation or other allowance, annuity or gratuity to a deceased person.

(9) 8 & 9 Geo. 5, c. 55, s. 8 (School Teachers (Superannuation) Act, 1918), as to sums not exceeding 100*l.* in respect of a superannuation allowance or gratuity to a deceased teacher.

(10) 7 & 8 Geo. 5, c. 62, s. 37 (the National Health Insurance Act, 1918), as to sums payable on deaths of deposit contributors, and the National Health Insurance (Approved Societies) Consolidated Regulations, 1918 (St. R. & O. 1918, No. 932), made thereunder.

By the Post Office Savings Bank Regulations, 1910, it is provided as follows :—

88.—(1) If the total property of any deceased depositor exceeds 100*l.*, after deduction of debts and funeral expenses, any sum which may, under these regulations, be paid to a survivor in the account (not being a trustee) whose name has been added to the account, at the request of such deceased depositor, or otherwise than to the legal personal representative of the depositor, shall, notwithstanding such payment, be, for the purposes of Estate Duty, treated as passing under the will or intestacy of the deceased depositor.

(2) The Postmaster-General shall, before making any payment in respect of deposits standing to the credit of a deceased depositor [either alone or jointly with any other depositor (not being a trustee) whose

name has been added to such account, at the request of such deceased depositor] to anyone but the legal personal representative of such deceased depositor or to the Public Trustee require a declaration by the claimant, or one of the claimants, or by the survivor or survivors in the account (or other evidence, to the Postmaster-General's satisfaction), that the total estate of the deceased depositor, including the amount of such deposits, does not, after deduction of debts and general expenses, exceed the value of 100*l.*

(3) In every such case as aforesaid, where the total estate of the deceased depositor, including such deposits, but after deduction of debts and general expenses, exceeds 100*l.*, the Postmaster-General shall, before making any payment to any survivor in the account, or to any person other than the legal personal representative of the deceased depositor or the Public Trustee, require production of a certificate from the Commissioners of Inland Revenue of the payment of the Estate Duty, and of a duly stamped receipt for the Succession or Legacy Duty payable in respect of such deposits, or of a certificate stating that no Succession or Legacy Duty is payable.

Clauses 26 (1), (2), and (3) of the Trustee Savings Bank Regulations, 1900 (St. R. & O. No. 629), contain similar provisions with regard to deposits in trustee savings banks.

The following examples show the result of these provisions :—

1. The deceased left 100*l.* free estate, gross—debts and funeral expenses amounted to 20*l.* = 80*l.* net. He also had added his wife's name to his account in the Post Office Savings Bank, and left 80*l.* to the credit of such account on his death. No grant of representation is necessary from the Revenue point of view, but Estate Duty is payable on the 80*l.* free estate and 80*l.* deposit = 160*l.*, and this can be paid on the C-1 Form.
2. The deceased left 270*l.* gross free estate—debts and funeral expenses amounted to 20*l.* = 250*l.* net. He had made a deposit in a trustee savings bank of 180*l.* in the joint names of himself and wife. As the free estate is over 100*l.* in value net, a grant of representation to the deceased's estate is necessary. The 270*l.* and the 180*l.* may be included in the Inland Revenue affidavit (Form B. 2) leading to such grant and the fixed duty of 50*s.* paid, the total gross estate being sub 500*l.*, or the fixed duty of 30*s.* may be paid on the 270*l.* gross free estate, and the sum of 180*l.* treated as "settled" property (as explained at p. 259), and *ad valorem* Estate Duty at 1 per cent. = 1*l.* 16*s.* paid in respect thereof.

3. The deceased left 2,500*l.* net free estate. He had made deposits in the Post Office Savings Bank from time to time, and had added his sister's name to such account, and at his death, 150*l.* stood to the credit of such account, the deceased having received the income therefrom during his life.

The 150*l.* should be included in the Inland Revenue affidavit of the deceased's estate leading to the grant of representation. This sum is also liable to Succession Duty as passing to the sister, Form No. 4 in duplicate.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate Duty were therein mentioned as well as Succession Duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

Sections 12 to 14 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), are as follows:—

12.—(1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provisions contained in that Act, real property or any estate or interest therein, shall not, as against the purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for Succession Duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act [31st May, 1889], then after the expiration of six years from the last mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable

and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

13.—(1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any Succession Duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

14. No person shall under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any Legacy Duty or Succession Duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

"*A purchaser for valuable consideration.*"—Marriage is a "valuable consideration," making a person taking under a marriage settlement "a purchaser for valuable consideration" within this section See

Re Donelan's Estate.

The facts are as follows :—

In 1857, on the death of A., lands became the subject of Succession Duty. B., the successor, died in 1867, having, by will made in 1863, charged the lands with 5,000*l.* in favour of C. In 1872 C., on his marriage, assigned the charge of 5,000*l.* to the trustees of his settlement on the usual trusts. The lands were afterwards sold, at the suit of an incumbrancer, and the Commissioners of Inland Revenue claimed to be entitled to payment of the Succession Duty, which became payable in 1857 out of the proceeds of the sale, in priority to the charge vested in the trustees of the marriage settlement of 1872.

It was held, on the 31st October, 1901, by the Court of Appeal in Ireland (Lord Ashbourne, C., and Fitzgibbon, Walker, and Holmes, L. JJ.), affirming the decision of Mr. Justice Ross, that the trustees of the marriage settlement were purchasers for valuable consideration within the meaning of sect. 12 of the Customs and Inland Revenue Act, 1889, that as against them the Succession Duty was barred after the lapse of twelve years, and that they were accordingly entitled to be paid in priority to the Commissioners.

See also *Morris* v. *Morris's Trustees*, p. 210.

The "*Notice*" by sect. 15 of the Customs and Inland Revenue Act, 1889, is required to be in writing and in such form as the Commissioners shall prescribe, and shall be delivered or sent in duplicate and an acknowledgment of the receipt thereof by, or on behalf of the Commissioners on the duplicate, shall be forthwith returned to the person by whom the notice was delivered or sent, but this section is not incorporated in the Finance Act.

The *Form* prescribed by the Commissioners is now numbered Entg. 19 (formerly 0262).

Sect. 47 of the Local Registration of Title (Ireland) Act, 1891, so far as material, is as follows :—

Subject to the first proviso in this section contained, all registered land shall be subject to such of the following burdens as for the time being affect the land, whether these burdens are or are not registered, namely (a) Succession Duty . . . provided as follows: (1) When it is proved to the satisfaction of the registering authority, that any land registered or about to be registered, is exempt from or has ceased to be subject to Succession Duty . . . the authority may enter on the register notice of the fact: and (2) Where the existence of any of the burdens, in this section mentioned, is proved to the satisfaction of the registering authority, the authority may with the consent of the applicant or

registered owner, or in pursuance of an order of the Court, enter notice thereof on the register.

"**And as if an account were not settled, &c.**"—There seems to be much difference of opinion as to the exact effect of this sub-section when the Estate Duty is paid by instalments. Do the six years referred to in sect. 14 of the Customs and Inland Revenue Act, 1889, commence to run from the date when the first instalment of Estate Duty is payable, or the date when the last instalment is payable? It is considered that exemption applies at the expiration of six years from the time when the last instalment fell due.

An "*account*" must have been delivered in order that sect. 14 can have any operation. See

Att.-Gen. v. *Montefiore.*

By his will, John Montefiore bequeathed his residuary estate in trust for his wife, Julia Montefiore, for life or widowhood, and after her death or second marriage, in trust for his children and the issue of previously deceased children, as his wife should by deed or will appoint, the shares of his daughters to extend to the receipt of dividends only, and in default of appointment in trust for all his children and the issue of those who had predeceased, the shares of his daughters to be held by the trustees in trust for the daughters for their lives respectively, with remainders over in favour of their children.

John Montefiore died on the 26th March, 1895, leaving his widow Julia and seven children, of whom six were daughters.

By her will, Julia Montefiore devised and bequeathed her estate in the event of her husband's death to the trustees of her husband's will, upon trusts to be dealt with for the benefit of her children in conformity with the trusts of his will.

Julia Montefiore died on the 31st July, 1895.

The defendant as a trustee of both wills accounted in 1895 for the Estate Duty under both wills.

Settlement Estate Duty on six-sevenths (being the daughters' shares) of the residuary estate of John and Julia Montefiore was not claimed until February, 1908.

The defendant contended that by sect. 8 (2) of the Finance Act, 1894, which incorporated sect. 14 of the Customs and Inland Revenue Act, 1889, the claims were barred.

The case was heard on the 9th February, 1909, by Channell, J., who gave judgment for the Crown with costs, as no "account"

(Form C-2) had been delivered in respect of the Settlement Estate Duty.

Apart from this sub-section, there is no limit to the time when the Crown may claim Estate Duty, and the following case would equally apply to Estate Duty.

Att.-General (Ireland) v. *Lordan.*

By an assignment of 14th December, 1861, certain leaseholds were assigned to trustees, in trust for A. during his life, and after his death, in trust for B. for life, remainders over. A. died on the 14th December, 1864, whereupon B. became beneficially entitled for life. No Succession Duty was ever paid by B. in respect of her succession. B. died on the 19th April, 1902, leaving the defendants her personal representatives. The Crown after B.'s death claimed the said Succession Duty as a debt due to the Crown out of her assets, and the defendants refused to pay, on the ground that the claim was barred by lapse of time and by the provisions of the Intestates Estates Act, 1884, s. 3 (47 & 48 Vict. c. 71). An information was filed by the Attorney-General.

The King's Bench Division (Ireland), Lord Chief Baron Palles and Gibson, J., held, on 12th January, 1906, in favour of the Crown, that such a claim was not within sect. 3 of the Intestates Estates Act, 1884, and therefore was not barred by the Statute of Limitations.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate Duty is payable upon the death of the deceased, and shall be accountable for the Estate Duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

The executor must specify (see sect. 8 (6) for the penalties of not specifying) all the property passing on the death in respect of which Estate Duty is payable, but he is only

accountable for the personal estate of which deceased was competent to dispose, and only to the extent of the assets he has or should (but for his own neglect) have received. This sub-section was interpreted in *Re Webber, Gribble* v. *Webber*, and in *Re Gray, Gray* v. *Gray*, but only by way of *obiter dicta*.

It may be observed that the executor (although not accountable as executor) may yet be accountable under sub-sect. 4, because he is acting in the management of the property.

See also *In re Horrex* (p. 129) as to the liability of an executor to deliver an account and supply information.

See sect. 2 (2) as to the executor's liability for Estate Duty on foreign assets.

An "*accountable*" person is a Crown debtor by virtue of sect. 8 (1), incorporating sect. 44 of the Succession Duty Act, 1853.

Crown debts rank prior to simple contract debts, therefore where the assets of an insolvent person, living or dead, fall to be distributed under circumstances which are not affected by the operation of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), debts due to the Crown must be paid in priority. See

Re Bentinck, Bentinck v. *Bentinck.*

A testator died in 1891 insolvent, but left sufficient assets to satisfy all the specialty creditors in full. Among the simple contract debts was a Crown debt for unpaid Probate Duty and unpaid Legacy Duty, which the testator ought to have paid in 1874.

It was held (by Stirling, J.) the Crown debt had no priority over the specialty debts, but was to be paid in full, and prior to the simple contract creditors. See also

Re Galvin.

A person who was executor of a deceased person received and applied for his own use assets of the deceased, without paying to the Crown Legacy Duty payable in respect of certain legacies. He was subsequently adjudicated a bankrupt, and his assignees in bankruptcy realised his estate. It was held, on 29th June, 1897, upon appeal to the Court of Appeal in Ireland from a decision of Mr. Justice Boyd (Judge in Bankruptcy), that the Crown debt for Legacy Duty was entitled to priority over the general creditors of the bankrupt, and that

such priority could be asserted by motion in the bankruptcy matter, and existed notwithstanding the vesting of the bankrupt's estate in his assignees.

It was held (by Mr. Justice Boyd) that costs cannot be given against the Crown where the Attorney-General is not a party *eo nomine*.

It must be observed that this is a decision of the Irish Court of Appeal, and that the Bankruptcy Act, 1883, did not apply to Ireland except where expressly provided, and there is no such provision as to sect. 150 of that Act.

Where the assets of a person, living or dead, fall to be distributed under the provisions of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 150 of that Act destroys the priority of the Crown's claim (except in the cases mentioned in sect. 40, which do not include death duties) as against the assets distributable, but sect. 30 of that Act is held to continue the liability of the debtor to the extent of the still unsatisfied part of the Crown debt even after the order of discharge.

Sects. 30, 40, and 150 of the Bankruptcy Act, 1883, are re-enacted, with some modifications, in sects. 28, 33, and 151 of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59).

Any information an executor may supply is confidential. See

Brown's Trustees v. *The Commissioners of Inland Revenue.*

It was held in this case that the Commissioners of Inland Revenue were not bound to produce letters (written to them by the defendant) to support the plaintiff's action for damages for statements alleged to have been made to the Commissioners by the defendants. Such communications were privileged documents.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate Duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person

in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate Duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

This sub-section defines who is liable for the Estate Duty when the executor of the deceased is *not accountable*, and, speaking generally, applies to all property except the deceased's free personalty and personalty of which the deceased was competent to dispose.

These persons are:—

(1) Every person to whom any property passes for any beneficial interest in possession; for example, a tenant for life and a donee under an *inter vivos* gift within twelve months (now three years) of deceased's death.

(2) Trustees, guardians, and committees.

(3) Any other person in whom any interest in the property so passing, or the management thereof, is at any time vested (except mere agents or bailiffs), and

(4) (a) Voluntary alienees, and (b) purchasers with notice; provided as to (b), the purchase was effected on or after the 2nd August, 1894. (See sect. 21 (3) if the purchase was before that date.)

See sub-sect. 18 as to relief of purchasers without notice.

As to who are primarily liable to account as between the trustees and beneficiaries, North, J., said in *In re Countess of Orford, Cartwright* v. *del Balzo* (1896), 1 Ch. 257, at p. 264: "The persons who under the settlement are liable in the first place to account for the duty are, I suppose, the trustees of the settlement"; but see

In re Dodd, Dodd v. *Dodd.*

Under the will of a testator, who died in 1864, A. was tenant for life of certain freehold, copyhold, and leasehold property. A. died in 1917, whereupon the property passed under

the will to his eldest son as tenant in tail. The son, having executed a disentailing assurance, was, subject to his mother's jointure, absolutely entitled to the property.

On a question between the son and the trustees of the will in whom the legal estate was vested, the Court decided that, being the person ultimately liable to pay, the son should render the accounts for the payment of the Estate and Succession Duties in respect of the property on A.'s death, and ordered the trustees to hand over to him any documents in their hands necessary for the purpose on his undertaking not to part with them until the duties in question had been paid.

Nos. 2 to 4 are only liable to the extent of the property actually received or disposed of by them.

Limited owners paying the Estate Duty are, by sect. 9 (6), entitled to a charge on the property therefor. (See *Re Earl Howe's Settled Estates*, *Earl Howe* v. *Kingscote*, *Turnbull* v. *Turnbull*, *Lord Advocate* v. *Countess Moray*, *Harris's Trustees* v. *Harris*.)

An insurance company would seem to be under an obligation under this sub-section, before paying over the policy moneys under a policy on the life of a person domiciled abroad, to inform the Commissioners of the death and to retain sufficient money to meet the duty. (See *Haas* v. *Atlas Insurance Company, Limited*.)

An injunction can be obtained by the Crown to restrain the owner of property from parting with it until the duty has been paid. (See *Att.-Gen.* v. *Wack*.)

"**Within the time required by the Act**," *i.e.*, within six months after the death. (See sect. 6 (4).)

"**Verify**," *i.e.*, on oath and by production of evidence. (See sub-sect. 14.)

(5) Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property

which they have reason to believe to form part of an estate in respect of which Estate Duty is leviable on the death of the deceased.

"**Every person accountable**" will include an executor *de son tort*. (See *Att.-Gen.* v. *The New York Breweries Company*.)

"**Every person whom the Commissioners believe to have taken possession.**"—It would appear these words are sufficient to enable the Commissioners to call upon mortgagees, agents, and the like to give particulars of the title and property they may receive, although they are not accountable for the duty thereon.

"**Verify a statement of such particulars together with such evidence as they require.**"—This sub-section read with sub-sect. 14 gives the Commissioners wide powers of calling for deeds, settlements, partnership articles, and the like.

Penalties are imposed for wilfully omitting to deliver any statement in compliance with this sub-section. (See sub-sect. 6.)

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate Duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

"**Wilfully.**"—The meaning of this word has received judicial construction on several occasions (see *In re Young and Harston's Contract, The Mayor of London and Tubbs' Contract*, and *Bennett* v. *Stone*); practically, it means intentionally.

"**According as the Commissioners elect.**"—If the person who fails to comply with this section is not an accountable party, the penalty cannot exceed 100*l*.

"**In any proceeding to recover such penalty.**"—The Acts regulating the recovery of penalties by the Commissioners are: The Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), as amended by the Public Accounts and Charges Act, 1891 (54 & 55 Vict. c. 24).

The acceptance by the Commissioners of duty and interest operates as a waiver of the penalties. (See 31 & 32 Vict. c. 124, s. 9.)

(7) Estate Duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

"**In the first instance.**"—It is, of course, obvious that while the executor may disclose a full and true statement of the deceased's free estate, and pay the duty at the then correct rate, there may be discovered afterwards settled property aggregable (under sect. 4) with the free estate which will necessitate a higher rate being paid on the free estate.

No time limit is fixed within which the accountable party can be called on to pay the further duty, but his liability may become barred by sect. 8 (2), or by obtaining a certificate under sect. 11 (2), but not under sect. 11 (1).

The additional duty is paid on Form D-1 (in duplicate) if the correction is to the deceased's free personal estate, and on Form D-2 (in duplicate) if to settled property or real estate, the duty on which was originally paid on Form C-1.

The fixed duty of 30*s.* or 50*s.* (under sect. 16) was formerly forfeited if the estate was found to be over 300*l.* and 500*l.* respectively, but it may now be allowed. (See Revenue Act, 1903, s. 14.)

"**In arrear.**"—Duty in arrear carries interest at 3 per cent. (see sect. 18 of the Finance Act, 1896), but at 4 per cent. if accruing on or after 31st July 1919. (Sect. 30 of the Finance Act, 1919.)

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

This sub-section appears to be little used in practice except in cases of reversions.

(9) Where the Commissioners are satisfied that the Estate Duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding 4 per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

This sub-section applies to duty to be accounted for on the Inland Revenue affidavit or on an account, and the interest is to be calculated at, not exceeding 4 per cent., or if the property yields more than that rate, then at the rate actually yielded.

Application should be made to the Estate Duty Office to obtain this concession.

(10) Interest on arrears of Estate Duty shall be paid as if they were arrears of Legacy Duty.

This sub-section is repealed by sect. 40 of the Finance Act, 1896, and sect. 18 of that Act charges interest at 3 per cent. (4 per cent. after 30th July, 1919: see sect. 30 of the Finance Act, 1919) per annum on all arrears of Estate Duty.

In *Re Fish, Lea* v. *Fish,* it was held that this interest was payable out of capital, and could not be charged against the tenant for life. But now see *Re Earl Howe's Settled Estates, Earl Howe* v. *Kingscote,* 88 L. T. R. 438, noted under sect. 9 (5). This case would appear to overrule *In re Fish.*

See sect. 9 of 31 & 32 Vict. c. 124, as to arrears of Legacy Duty, which runs as follows:—

9. In any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts now in force or in respect of any succession under the Succession Duty Act, 1853, is or shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon *at the rate of 4 per centum per annum, and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as arrears of duty and as part thereof:* Provided always that the acceptance or recovery by the said Commissioners of arrears of duty with interest thereon as aforesaid, shall be an absolute

waiver of the penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act. [The words in italics were repealed by 59 & 60 Vict. c. 28, s. 40.]

(11) If after the expiration of twenty years from a death upon which Estate Duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

It will be observed this sub-section applies to certain cases which do not fall within the terms of sub-sect. (2), but there is no *obligation* on the Commissioners to remit the duty or interest.

This power is extended by sect. 13 of 7 Edw. 7, c. 13 (Finance Act, 1907), to all death duties as defined by sub-sect. (3) of sect. 13 of the Finance Act, 1894.

By sect. 18 (3) of the Finance Act, 1896, the Commissioners may remit the interest on any death duties at any time if the amount appears to them to be so small as not to repay the expense and trouble of calculation.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate Duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over valuation by the Commissioners, with interest at three per cent. per annum.

"**To the satisfaction of the Commissioners.**"—If the Commissioners are not satisfied an appeal lies to the High Court. (See sect. 10.)

Claims for a return, on account of debts, should strictly be made within three years of the grant or such further time as the Commissioners may allow. (See sect. 8 (1) incorporating the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 31.) As a general rule, effluxion of time alone is considered to be no bar to a return of Estate Duty.

A fall in value of the property subsequent to the valuation is not a good ground for obtaining a return. See

Wishart and others (Gellatly's Executors) v. *Lord Advocate*,

where it was held that executors, who had on 6th March, 1878, valued 2,400*l.* City of Glasgow Bank Stock for Inventory Duty at 5,738*l.* (its then selling price), could not afterwards say that it was of no value, because in October of the same year the bank went into liquidation. The executors might have sold in March for 5,738*l.*

"**And in cases where the over-payment was due to over valuation by the Commissioners, with interest at 3 per cent. per annum.**"—It will be observed that interest is only payable, if the over-payment is due to the over valuation by the Commissioners, not where the Commissioners have simply accepted the parties' valuation; of course, such over valuation would be attributable to the Commissioners if they had not accepted the parties' first valuation, but had insisted on a higher one or had disallowed deductions which afterwards should be found to be correctly taken.

Applications for a return should be made by a corrective affidavit (D-1) or corrective account (D-2) on oath.

The Court may order the Commissioners to pay interest, and this was done in *Sprot's Trustees* v. *The Lord Advocate*.

(13) Where any proceeding for the recovery of Estate Duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

The Crown Suits Act, 1865 (28 & 29 Vict. c. 104), Part V., by virtue of sect. 8 (1) of the Finance Act, 1894, would appear to apply to Estate Duty.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply

with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

For affidavits accounts, &c., see Table of Forms, p. 614. By virtue of the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 24,

Any statutory declaration to be made in pursuance of or for the purposes of this or any other Act, for the time being in force, relating to duties, may be made before any of the Commissioners, or any officer or person authorised by them in that behalf, or before any commissioner for oaths, or any justice or notary public, in any part of the United Kingdom, or at any place out of the United Kingdom before any person authorised to administer oaths there.

By the Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 7 (6), the above sect. 24 was declared to apply to affidavits and oaths as well as to statutory declarations.

The Commissioners may accept a statement, as a correction of an affidavit or account, without requiring such statement to be made on oath. (See Finance Act, 1900, s. 13 (2).)

See sub-sect. 6 for penalties on failure to comply with this sub-section.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

Certificates are given under sects. 8 (8), 9 (2), 11 (1), 11 (2), 12, and 13.

(16) The Estate Duty may be collected by means of stamps or such other means as the Commissioners prescribe.

The fixed duties of 30*s.* and 50*s.* (see sect. 16 (1)) only are paid in England by special adhesive stamps, and the interest thereon is paid by postage stamps. The *ad valorem* Estate Duty and Settlement Estate Duty and interest thereon are paid in money with an impressed stamp denoting the name and rate of duty.

(17) The form of certificate required to be given by the proper officer of the Court under sect. 30 of the Customs and Inland Revenue Act, 1881, may be varied

by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

Sect. 30 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), is as follows :—

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing, under the hand of the proper officer of the Court, showing that the affidavit for the Commissioners of the Inland Revenue has been delivered, and that such affidavit, if liable to Stamp Duty, was duly stamped, and stating the amount of the gross value of the estate and effects shown by the account.

The following rule of Court has been issued :—

"Additional Rule and Order for the Registrars of the Principal and District Probate Registries with regard to non-contentious business.

"The number of the Rule for the Principal Registry is 106 : and for the District Registries, 101.

"The certificate required to be given by the proper officer of the Court, under sect. 30 of the Customs and Inland Revenue Act, 1881, shall, for the purposes of the Finance Act, 1894, and subject to any necessary variations and modifications which the officer of the Court is hereby authorised at his discretion to make, be in the form following :—

"And it is hereby certified that an affidavit for Inland Revenue has been delivered, wherein it is shown that the gross value of the said estate within the United Kingdom (exclusive of what the said deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to *l.*

"And it is further certified that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that *l.* for Estate Duty and interest on such duty has been paid, the duty being charged at the rate of *l.* per cent."

It has been ordered : (i) That where the fixed duty under sect. 16 (1) is paid on the affidavit, the concluding words of the certificate are to be "and that the said affidavit bears a stamp of 1*l.* 10*s.*" [or 2*l.* 10*s.* as the case may be] ; (ii) that when the affidavit bears a duty-paid stamp, the concluding words are to be "and that the same affidavit bears a duty-paid stamp" ; and (iii) that if the grant is issued in respect of trust property only, the certificate is to be varied by striking out the reference to trust property, and adding after the amount of the estate the words "in respect to which the deceased was trustee only."

(18) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

"**A bonâ fide purchaser**" who purchases from an executor, property which passed to him as executor, is not liable to Estate Duty even if he has notice, because neither sect. 8 (4)

nor sect. 9 (1) applies to such property. A purchaser would include a mortgagee, lessee, and the like.

See *Morris* v. *Morris's Trustees*, p. 210, and *Re Donelan's Estate*, p. 175, as to marriage settlement trustees being purchasers for valuable consideration.

"**Without notice.**"—These words must be taken to mean without *notice of the death*, and not without notice of any unpaid duty, because if a purchaser had notice of a death, he would be presumed to know that Estate Duty was payable on the property ("*Ignorantia legis haud excusat*"), and he would be then put upon inquiry to ascertain if it had been paid.

As to what is notice, see sect. 3 of the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), which provides as follows:—

3.—(1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

In *Nesbitt and Potts' Contract*, the Court of Appeal held that a person who had not insisted on a forty years' title to real estate had constructive notice of what he would have ascertained if he had insisted on such title.

A purchaser who has notice of a death should therefore always inquire from the Estate Duty Office whether Estate Duty is payable on such death, and whether the same has been paid or not. This should be done whether he is purchasing under a power or trust for sale or from a beneficiary absolutely entitled.

9.—(1) A rateable part of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

In order to find how the Estate Duty on any property is to be borne, the first point to ascertain is: Does the property pass to the executor "*as such*"? If it does, then the Estate Duty follows the old rule as to Probate Duty, and is payable out of the deceased's residuary personal estate unless the testator directs it to be paid out of a particular fund. (See *Re Gray, Gray* v. *Gray*, p. 149.) If it does not pass to the executor as such, then the duty is to be borne by all the beneficiaries rateably according to their several interests.

What property does pass to the executor *as such*?

Generally speaking, it includes all the deceased's free personal estate in Great Britain, including leaseholds. See

Re Culverhouse, Cook v. *Culverhouse.*

In this case Kekewich, J., held Estate Duty on leaseholds specifically bequeathed is payable not out of the leaseholds themselves, but out of the testator's general personal estate; such leaseholds vest in the executor *as such.*

It does not include real estate even since the Land Transfer Act. (See *In re Palmer, Palmer* v. *Ross-Innes*; *Re Jolley*, and *Re Sharman, Wright* v. *Sharman.*) Nor does it include the deceased's foreign personal estate. See

In re Scull, Scott v. *Morris.*

An English testator bequeathed personalty in America to an American executor upon trust for sale, and to pay out of the proceeds the testator's American debts "and any American death duties or testamentary expenses"; and the testator devised realty in England to an English executor upon trust for sale, and to pay out of the proceeds a fair proportion of the testator's English debts and of "his funeral and testamentary expenses and estate, legacy, and other duties payable in England": and the testator gave his residue to his English executor upon trust for sale, and to pay out of the proceeds his "debts, funeral

and testamentary expenses except such debts and testamentary expenses as are hereinbefore directed to be paid out of some other fund." The English executor proved the will in England, save as to the American personalty, paying the English estate and legacy duties due in respect of the American personalty out of the English assets. Upon summons asking that these duties on the American personalty should be repaid to him by the American executor:—

Held by the Court of Appeal (on 19th October, 1917) that the American personalty did not pass to the English executor "as such" within sect. 9, sub-sect. 1, of the Finance Act, 1894, and that the duties ought to be repaid under sect. 9, sub-sect. 4, of that Act, there being no direction to the contrary in the will. That the Legacy Duty paid in England in respect of the American investments ought to be repaid to the English executor by the American executor.

This case overruled the decision of Neville, J., in *In re Scott, Scott* v. *Scott*, p. 341, and confirmed the decision in *Wainwright* v. *Skandinaviska, &c., Bank.*

Wainwright v. *Skandinaviska, &c., Bank.*

The deceased died in 1912, domiciled in England, leaving personal estate in England and Sweden. By his will, which he directed should only apply to his English assets, he appointed English executors and directed them to forward to the Skandinaviska Bank in Sweden any documents representing assets in Sweden, with instructions to that bank to collect and distribute such assets according to the law of Sweden. After certain legacies he gave his residuary estate in England, after payment of his testamentary expenses, as to one-tenth to English charities and as to the residue to the said bank to distribute among his heirs according to Swedish law. The English executors paid the Estate Duty on his Swedish assets. The question then arose whether the English assets should bear the Estate Duty on such Swedish assets.

Held (by the V.-C. of the County Palatine Court of Lancaster on 26th January, 1914) that the Swedish assets must bear their share of the Estate Duty.

Property passing to the survivor of a joint account or nominee does not pass to the executor "as such."

As to whether personal property over which the deceased had and exercised an absolute power of appointment passes to his executor *as such*, there have been several conflicting decisions.

It was held it does not in:—

(1) *Re Treasure, Wild* v. *Stanham*, by Kekewich, J.

(2) *Re Maddock, Llewellyn* v. *Washington*, by Kekewich, J.

(3) *Re Power, Re Stone, Ackworth* v. *Stone*, by Byrne, J.

(4) *Re Dodson, Gibson* v. *Dodson*, by Warrington, J.

(5) *Re Hadley, Johnson* v. *Hadley* (reversed on appeal), by Parker, J.

It was held it does pass to the executor "as such" in:—

(1) *Re Moore, Moore* v. *Moore*, by Buckley, J.

(2) *Re Fearnsides, Baines* v. *Chadwick*, by Eady, J.

(3) *Re Creed, Thomas* v. *Hudson*, by Eady, J.

(4) *Re Orlebar, Wynter* v. *Orlebar*, by Neville, J.

(5) *Re Hadley, Johnson* v. *Hadley* (Court of Appeal), by Cozens-Hardy, M. R., Moulton and Farwell, L.. JJ.

The question was only finally settled by the House of Lords in

O'Grady v. *Wilmot.*

By two indentures of the 20th November, 1881, freeholds in Northumberland were conveyed by M. O'Grady upon trust, at the request of the settlor during her life and after her death at the discretion of the trustees, to sell and to stand possessed of the moneys arising under the trust for sale (or the investments thereof) in trust for such persons as the settlor should by deed or will appoint, and in default of appointment, on trust to pay the income to the settlor for life and after her death to the plaintiff (F. O'Grady) for life, with remainders over.

By her will, dated 25th October, 1909, M. O'Grady, in exercise of the said power, appointed that the trustees of the settlement should stand possessed of "all the hereditaments, property, money, stocks, funds, and securities of whatsoever nature" which should at her death be subject to the trusts of the two indentures upon trust to "convey, assign, transfer, and pay" the same to two persons whom she appointed trustees.

She then proceeded to "give, devise, bequeath, and appoint the same," and all other her freehold, leasehold, copyhold, and personal property in Northumberland, called in her will her trust estate, to her trustees upon trust for conversion, and until conversion declared that they should hold her trust estate in trust to pay to or permit the plaintiff to receive the rents, royalties, interest, dividends, and annual income derived therefrom, and after the death of the plaintiff, her trustees should hold her trust estate as therein mentioned.

The will gave the trustees power to postpone the sale of any part of her real estate, and directed that the trustees should not, during the life of the plaintiff, without his consent, sell any of the property given to him for life. The residue was given, subject to testamentary expenses, debts, and legacies, to F. O'Grady.

M. O'Grady died on the 12th January, 1910, when the bulk of the freeholds remained unsold.

The plaintiff, F. O'Grady, took out a summons to determine whether the Estate Duty in respect of the freeholds was payable thereout, or out of the residuary personal estate.

It was held (by Eve, J., on 29th October, 1914) that the property was "*de facto*" land at the testatrix's death, and she could have appointed it to herself, and if she had done so there could have been no question that it passed as land, and did not vest in the executor "as such." It was clear the testatrix intended that the land should be assured to the appointees in its then character. The testatrix intended to put an end to the trust for sale under the settlement. The effect of the appointment was to put an end to it, and make it impossible for the trustee of the will to sue her executor for money instead of the land. The duty was therefore payable out of the land, and not out of the residuary estate.

The Court of Appeal (Lord Cozens-Hardy, M. R., Phillimore, L. J., and Joyce, J.) held that the property was personal estate in equity and therefore passed to the testatrix's executors "as such," and the Estate Duty was payable out of the residuary estate.

The House of Lords (Buckmaster, L. C., with Lords Atkinson and Sumner, Lord Parmoor dissenting) held on the 13th April, 1916, that the property passed on the deceased's death as personal estate; that it did not pass to the executors "as such," and that the Estate Duty payable in respect thereof was a first charge on the property and was not thrown upon the residuary estate by the direction as to testamentary expenses.

Lord Sumner agreed that as the executor would have to pay the Estate Duty on proving the will it was a testamentary expense, but the clause in the will as to testamentary expenses was not strong enough to negative the operation of sect. 9 (1), which was directory.

If the absolute power of appointment is not exercised, the property does not pass to the deceased's executor "as such," and consequently the Estate Duty is payable out of the unappointed fund. See

Porte v. *Williams.*

Henry M. Backler, by his will dated 13th February, 1891, gave his wife a life interest in, and a general power of appointment by deed or will over his residuary real and personal estate. Mrs. Backler survived her husband, and died in 1904 without having exercised the power of appointment by deed. By her will dated 19th November, 1902, she exercised the power to a very small extent, and expressly declared that she did not desire to exercise it further, and she directed her executors to pay her funeral and testamentary expenses. The fund, subject to the power, was wholly personalty at Mrs. Backler's death. Mrs. Backler's executors paid Estate Duty on her estate, and also (under sect. 6 (2) of the Finance Act, 1894) on the whole of the fund which she had power to appoint. They then applied to the trustees of H. M. Backler's will for repayment of the duty so far as it was paid on the unappointed portion of his residuary estate, and failing to obtain such repayment, the plaintiff (then the sole executor) brought an action for a declaration that this duty was a charge in his favour on the unappointed fund in the hands of H. M. Backler's trustees under sect. 9 (4), and for recovery of it out of the fund.

It was held (by Joyce, J.), on 4th November, 1910, that "testamentary expenses" did not include Estate Duty on the unappointed fund, therefore the Estate Duty on such unappointed fund ought to be paid out of the unappointed fund. It was stated by Joyce, J., that *Re Clemow* did not decide that the expression "testamentary expenses" included Estate Duty in respect of personal property of which the deceased was "competent to dispose." See also

In re Hicklin, Public Trustee v. *Hoare.*

A testator who died in 1909, by his will gave the residue of his personal estate to his wife for life, with remainder for such persons as she should by deed or will appoint, and in default of appointment he directed certain pecuniary legacies (not given free of duty) to be paid and the residue to be divided among certain persons absolutely.

The wife died in 1915, having partially exercised the power of appointment. No question arose as to the duty on the appointed part.

Astbury, J., held (on 21st June, 1917) that where, as in the present case, sect. 9 (1) gave a charge on the property for

Estate Duty the charge fell rateably on the pecuniary and residuary legatees of the unappointed fund, but that the costs and expenses incidental to the payment of such duty were the ordinary costs of distribution and must be borne by the residuary legatees alone.

A *donatio mortis causâ* does not pass to the deceased's executor "as such." See

Re Hudson, Spencer v. *Turner.*

On the 21st June, 1909, Thos. P. Hudson made a gift to his housekeeper, Violet G. Turner, of three deposit notes for sums amounting to 2,000*l.* as a *donatio mortis causâ*. On the 24th June, 1909, Thos. P. Hudson made his will appointing executors and making certain pecuniary bequests, including 2,000*l.* legacy to Violet G. Turner, and directing his executors to pay his testamentary expenses out of his residuary estate. The testator died on 27th June, 1909.

In an action of *Hudson* v. *Spencer*, [1910] 2 Ch. 285; 103 L. T. 279, the *donatio mortis causâ* was held valid, notwithstanding the gift by will of the legacy of the same amount. The executors took out a summons to determine whether the Estate Duty payable on the *donatio mortis causâ* was payable thereout or out of testator's residuary estate. It was contended on behalf of the donee that a *donatio mortis causâ* can be revoked by the donor up to the time of his death; it was therefore property of which deceased was competent to dispose at his death; that being a "chose in action" the equitable interest only passed to the donee, and the legal title passed to the executor "as such"; that the duty therefore had to be paid by the executors under sect. 6 (2), and that in any event the direction to pay the "testamentary expenses" included Estate Duty on the gift.

It was held by Warrington, J. (on 1st December, 1910), that although it was doubtful whether the donation came within the description of property of which the deceased was "competent to dispose," assuming it did come within that description, this merely made the executor liable to pay the duty on it. The gift did not pass to the executor as such. All he took was interest of no value, namely, the bare legal title to the "chose in action." The Estate Duty was not a "testamentary expense." Accordingly, the Estate Duty on the gift must be borne by the donee.

Where the deceased is a life tenant of personal estate under

a settlement, and subject to the life interest of a succeeding tenant for life has also an absolute power of appointment by will, which is exercised, the question of how the Estate Duty is to be borne is at present somewhat doubtful. See

Re Dixon, Penfold v. *Dixon.*

By his marriage settlement, dated 30th September, 1890, J. S. Dixon settled certain funds upon trust for himself for life (died 9th July, 1900), after his death for his wife for life (living), and after the death of the survivor, for such persons as he should absolutely by will apoint.

The husband exercised this power by his will, and directed payment of his testamentary expenses out of his general estate.

On his death, in 1900, the marriage settlement trustees returned the value of the fund on Form C-1 at 13,199*l.* 10*s.* 10*d.*, and Estate Duty became payable thereon at 7 per cent. There was other aggregable property.

Held (by Buckley, J.) that the Estate Duty which became payable on the settlement fund was duty for which the widow, as tenant for life in possession, or the settlement trustees and not the husband's executors were accountable under sect. 8 (4); that the executors could, if requested by the widow or the settlement trustees, pay the duty under sect. 6 (2); that the persons accountable or the executors paying the duty were entitled under sect. 9 (5) and (6) to a charge upon the fund for the amount of the duty; that the duty in question did not include the duty or any part of the duty in respect of the testator's interest in the reversion expectant on his wife's death, but was to be borne by the settled fund and not by the testator's residue.

Buckley, J., also referred to the decision of Byrne, J., in *Re Power, Ackworth* v. *Stone*, but stated that, as the question whether an appointed fund passed to an executor *as such* did not arise in this case, he would not reconsider that point.

But the case of *Re Dixon, Penfold* v. *Dixon* is apparently in conflict with and overruled by

Re Avery, Pinsent v. *Avery.*

By a settlement dated the 29th August, 1902, made on the second marriage of the testator, Sir William Avery, securities to the value of over 50,000*l.* were vested in trustees. The trustees were to pay the income to Sir William Avery for life,

and then to his wife for life, and after her death to stand possessed of the funds in trust for Sir William Avery absolutely. By his will the said Sir William Avery disposed of the trust funds after the death of his wife (in events that happened) in favour of his two daughters by his second marriage, and his will directed his testamentary expenses should be paid out of the residue of his estate. It was therefore to the interest of the two daughters to throw upon the residue of testator's estate as large a proportion of the duties as possible.

On the 20th December, 1911, a summons was taken out by the guardian *ad litem* of the two infant children of the second marriage, claiming a declaration that the Estate Duty which, upon the death of the testator, became payable in respect of the settled funds or the testator's interest therein, was, under the provisions of the Finance Act, 1894, or, alternatively, upon the true construction of the testator's will and codicil, payable out of the estate of the testator and was not a charge upon or payable out of the settlement funds.

On 16th May, 1912, Warrington, J., following the decision of Buckley, J., in *Re Dixon, Penfold* v. *Dixon,* [1902] 1 Ch 248, held that the Estate Duty which became payable on the death of Sir William Avery in respect of the settled funds was a charge on and payable out of the settled funds and not out of the testator's residuary estate.

Certain of the beneficiaries under the will appealed. The Court of Appeal (Cozens-Hardy, M. R., Farwell and Hamilton, L. JJ.) allowed the appeal.

Cozens-Hardy, M. R., in the course of his judgment, said that the reversionary interest in the settled fund formed part of the testator's estate which he was competent to and did dispose of by his will. By sect. 6, sub-sect. 2 of the Finance Act, 1894, the executors, before obtaining probate, were bound to pay the Estate Duty in respect of all the personal property of which the testator was competent to dispose, although by sect. 7, sub-sect. 6, they might postpone payment in respect of this reversion until it fell into possession. The Estate Duty in respect of the testator's reversionary interest ought to be paid out of his residuary estate.

Farwell, L. J., said *(inter alia)* that he did not intend to suggest that the trustees would be safe in paying over the trust funds to any executors on the death of the tenant for life without being satisfied that all duty had been paid. He expressed no opinion on the question whether the trustees could be compelled by the Crown to raise and pay the duty at

once if the executors desired to postpone payment under sect. 7. It appears from the judgment of Hamilton, L. J., that the executors had elected not to pay any duty in respect of the reversion until it fell into possession.

It seems to be clear that in cases similar to *Re Dixon, Penfold* v. *Dixon*, and *Re Avery, Pinsent* v. *Avery*, there is an immediate claim for Estate Duty on the death of the deceased under the settlement on the capital of the funds under sect. 1 of the Finance Act, 1894; it would appear, therefore, the trustees of the settlement should raise and pay the Estate Duty out of the settled funds on the deceased's death, and that the deceased's executors should (when they elect to pay the duty) raise the amount of Estate Duty out of the deceased's residuary estate (in conformity with *Re Avery*) and pay the amount to the trustees of the settlement. The correct procedure in this class of case must remain in doubt until it has been settled by the Courts.

Freehold registered land in Ireland (*i.e.*, freehold property purchased under the Land Purchase (Ireland) Acts and registered under the Local Registration of Title (Ireland) Act, 1891), notwithstanding that it vests in the deceased's legal personal representative, apparently "does not pass to the executor as such" within the meaning and for the purpose of this sub-section.

Estates *pur autre vie* in Ireland which are either (a) limited to a person and his executor, or (b) contain no words of limitation, pass to the executor "as such," having regard to sect. 6 of the Wills Act, 1837, and sect. 9 of the Landlord and Tenant Law Amendment Act (Ireland), 1860.

There have been numerous decisions on the question how the Estate Duty on property which did not pass to the executor "as such" should be borne.

These may be divided into:—

I. *Cases regarding the Estate Duty on property belonging to the deceased absolutely and passing under his will or intestacy.*

II. *Cases regarding the Estate Duty on property passing under deeds or wills (other than the deceased's) and* inter vivos *gifts.*

I. *As to the property belonging to the deceased absolutely.*

(a) As to the effect of a clause in a will empowering a life tenant of real estate (and absolute legatee of personal estate) to

"raise . . . all death and succession duties which may fall upon her."

Fraser v. *Croft.*

A testator gave his wife a life rent of his lands and the residue of his moveable estate absolutely, and conferred on her full power "to raise such sums as may be required to pay all death and succession duties which may fall upon her after my decease as well as all my debts and funeral expenses." The wife claimed the right to charge the fee of the lands with the Estate Duty falling upon her whether in respect of the lands or the moveables.

Held by the Court of Session Second Division (on 28th January, 1898) that she was not entitled to charge the lands with the whole Estate Duty, but only with the rateable part attributable to such lands.

(b) As to how Estate Duty, in respect of real estate taken by a beneficiary under an option in the will as part of his share of residue, should be borne.

In re Jolley, Neal v. *Jolley.*

A testator devised and bequeathed his real and personal estate to trustees, in trust to sell the same, and out of the proceeds to pay his testamentary expenses, and subject thereto to hold same in trust for his children, but with an option to two of his sons to take certain freehold premises specifically. The executors paid the Estate Duty and the sons exercised the option.

It was held (by Joyce, J.) that the Estate Duty on the real estate taken by the sons, under the option, was payable by them just as if the real estate had been devised to them specifically, and the remainder of the real estate and personal estate had been given on trust for sale, &c.

(c) As to a legacy charged by a testator dying after the 1st August, 1894, on a mixed fund of proceeds of sale of real and personal estate.

Re Trenchard, Trenchard v. *Trenchard.*

Edward Penny Trenchard, by his will dated 20th November, 1897, gave to his wife, so long as she should remain his widow, an annuity of 500*l.*, and he declared that this annuity should be a first charge on all his freehold properties at Greenwich.

He gave various legacies and then devised and bequeathed all his real and personal estate, not thereby otherwise disposed of, upon trust for sale and conversion, and out of the proceeds to pay his funeral and testamentary expenses and debts and legacies, and to stand possessed of the residuary trust moneys upon certain trusts.

The Greenwich property was not specifically devised. The residuary legatees claimed that the gift to the wife was not an annuity but a rent-charge, and ought to bear its own share of the Estate Duty payable in respect of the testator's estate.

It was held by Warrington, J., that the question whether any part of the Estate Duty ought to fall on the annuity depended upon the true construction of the will, and that the statement in Theobald on Wills, 5th edit., p. 442, that "a gift of an annuity followed by a direction that it is to be a charge on certain land makes it a charge on that land only, and the personalty is not liable" was accurate, only in cases where, upon the construction of the particular will, the gift must have that effect.

Warrington, J., said this annuity was "a mere personal annuity not payable primarily out of the Greenwich estate, but payable, I will not say primarily, out of the personalty." "This is a mixed fund, and the annuity is payable in the same manner as the other legacies out of the mixed fund, but with a charge on the Greenwich property."

He further added, "I hold that this is simply a legacy payable like the other legacies, and the incidence of the Estate Duty will follow that."

He did not go on to decide whether such other legacies ought to bear any part of the Estate Duty on the real estate, but this point was decided in *Re Cooper* (*deceased*), *Poë* v. *Cooper* (see p. 238).

The case of *Re Sir W. H. Palmer*, *Leventhorpe* v. *Palmer* (see p. 238), turned on the express provisions to the contrary contained in the will.

(d) As to whether the Estate Duty paid in respect of realty passing to a lunatic out of personalty passing to him at the same time, remains at his death a charge thereon in favour of his personalty.

Re Hole, *Davies* v. *Witts*.

The facts are as follows:—

A lunatic became entitled, under the will of a testatrix, to

her residuary real and personal estate. The executor of the testatrix, and also committee of the lunatic, paid the Estate Duty in respect of the real estate, out of personalty, but did not apply in Lunacy for a charge on the real estate. The lunatic continued to live for a number of years, and after providing for his maintenance throughout this time, there was a considerable amount of surplus rents, which would have sufficed if so applied to entirely pay the amount of the Estate Duty.

The lunatic died intestate in 1903, and the next of kin claimed to be entitled to a charge upon the lunatic's real estate for the amount of the Estate Duty.

Held (by Farwell, J.) that assuming the payment of Estate Duty out of realty had originally created a charge on the real estate in favour of the personal estate, by virtue of sect. 9 of the Finance Act, 1894, the charge ought to have been paid off out of the surplus rents, so that the next of kin was not then entitled to a charge.

The Court of Appeal (Collins, M. R., Romer and Cozens-Hardy, L. JJ.) affirmed this decision.

(e) As to whether Estate Duty paid out of personalty in respect of realty passing to an infant, who subsequently dies, ought to be recouped to the next of kin by the infant's heir-at-law.

In re Wilson, Wilson v. *Clark.*

W. died intestate in 1902 whilst seised of lands of gavelkind tenure, and leaving a widow, C., who was entitled to the income of one-half of the lands during widowhood for her dower, and an infant daughter, K., who was his heiress. Letters of administration of W.'s estate and also of K.'s estate (when she died in her infancy in 1913) were granted to C., who on W.'s death paid the estate duty on his realty out of his personalty, and therefore as to two-thirds of the duty out of that to which K. was beneficially entitled and as to one-third out of C.'s share. On the death of K. the defendants were the heirs of W. in respect of the gavelkind lands, which were sold by the widow, C.

The widow claimed to retain out of the proceeds the amount of the Estate Duty paid by her, out of the personal estate, in respect of the lands or at least one-third of it.

Held (by Sargant, J.), on the 2nd December, 1915 (following *In re Hole,* [1906] 1 Ch. 673), that C. was not entitled to have the two-thirds of the Estate Duty paid to her out of the proceeds

of sale; but that she was entitled in respect of the one-third of the duty to a charge on K.'s real estate and to have it paid out of the proceeds of sale.

(f) The charge created by this sub-section is an equitable charge within the Real Estate Charges Act, 1877 (40 & 41 Vict. c. 34).

Re Bowerman, Porter v. *Bowerman.*

The facts are, shortly, as follows:—

Agnes Ellen Bowerman died intestate, a spinster, on the 30th October, 1904, so that her father, George Bowerman, became entitled as her heir-at-law and next of kin to her freehold property, No. 35, London Road, St. Leonards-on-Sea, and to her personal estate. George Bowerman died intestate on the 7th July, 1907, without having taken out letters of administration to his daughter's estate, and without having paid Estate Duty on the said house. Under these circumstances the question arose whether the Estate Duty which became payable on the death of Agnes E. Bowerman in respect of No. 35, London Road, should be discharged out of such property or out of the personal estate of George Bowerman.

It was held (by Joyce, J.) that sect. 9 (1) of the Finance Act, 1894, created a charge on the real estate that was within the meaning of the words "any other equitable charge" used in the Real Estate Charges Act, 1877; the Estate Duty was therefore payable out of No. 35, London Road, in exoneration of the personal estate.

(g) Estate Duty on real estate subject to a trust for sale which has failed is payable out of the real estate. See

Re Grimthorpe, Beckett v. *Grimthorpe.*

By his marriage settlement, dated in 1845, the settlor settled certain real estate upon trust for himself for life, and after his death upon trust for sale, and he directed that the proceeds of the sale should be held upon trust to pay an annual sum to his wife for life, and that 10,000*l.* should be held upon trust for such purposes as he should by will appoint, and that the residue should be held upon trust for his children, and if there should be no child, upon trust for himself, "his executors, administrators, and assigns."

The settlor's wife died in 1901. The settlor made no

appointment of the 10,000*l.*, and died in 1905 without ever having had any issue.

By his will, dated in 1901, the testator appointed and devised his "interest" in the estates to his "successor in fee," and by a codicil to his will, dated in 1902, he appointed the "estates" to his nephew, who was his successor. Under a deed of compromise, approved by the Probate Court, the estates were conveyed to the testator's successor.

The question was whether the settlor's successor took the estates as realty or as personalty, and whether the Estate Duty thereon was payable by him or out of the residuary personalty.

The Court of Appeal (Cozens-Hardy, M. R., Moulton and Farwell, L. JJ.) held, 19th October, 1908:—

(1) The estates were unconverted by the settlement, there being no enforceable trust for sale, and therefore they passed as realty under the settlor's will.

(2) The Estate Duty thereon was consequently payable by the settlor's successor out of the real estate.

(h) A devise "free from incumbrances" frees from Estate Duty.

Re Nesfield, Barber v. *Cooper.*

A testator by his will, dated the 8th July, 1908, devised his messuage and premises "free of any incumbrances to the vicar and churchwardens of St. Mary's, S., and their successors for a vicarage or clergy house for the parish church of S." He also directed his trustees to pay his debts and funeral and testamentary expenses out of his residuary estate, and directed that all legacies, annuities, and weekly sums given by his will or any codicil thereto should be paid "free and clear of Estate and Legacy Duty." For the purpose of the business carried on by himself the testator had an overdraft at his bank and several loan accounts, and as security therefor he had deposited the title deeds of most of his real and leasehold hereditaments, including those of the premises above referred to. At the date of his death, on the 19th October, 1912, a large sum was due to the bank. This summons was taken out for the determination of the question (*inter alia*) whether by reason of the words in the will, "free of any incumbrances," the above-mentioned devise passed to the devisees free from any and what duties.

Held (by Joyce, J., on the 27th March, 1914) that upon the true construction of the will the words "free of any incumbrances" were inserted for the purpose of relieving the property,

and that the payment of Estate Duty and Succession Duty was thrown upon the general residue.

(i) A conditional contract by the deceased to sell real estate subject to the sanction of the Irish Land Commission does not effect a conversion in the deceased's lifetime. See

In re Marlay, Rutland (Duke of) v. *Bury.*

The owner of an estate in Ireland had agreed to sell the same, pursuant to the Irish Land Act, 1903, to his tenants subject to the sanction of the Irish Land Commission. This sanction had not been obtained at the time of his death in 1912. By his will he devised this real estate to B. in fee simple, and on the latter's behalf it was contended that if and when the Commission approved of the sale the effect would be to convert the property into personal estate as from the date of the conditional contracts, and so as to cause the Estate Duty to be payable out of the residue of the testator's personal estate.

The Court of Appeal held (on the 6th May, 1915) that what the devisee took was an interest in fee simple in the estate defeasible only in an event which had not happened and might not happen, and that the duty was payable out of the estate accordingly.

If the conditional contracts became absolute, the charge of any unpaid duty would in the circumstances be shifted from the property to the proceeds of sale thereof (see the Irish Land Act, 1903, s. 16), so that the Estate Duty would not in any event be payable out of the testator's residuary personal estate.

(j) A direction in a will to invest the residue of personal estate "after payment of all and singular my debts, funeral and testamentary expenses, including death duties," does not make the Estate Duty on the real estate payable out of the personal estate.

In re Massey, Ram v. *Massey.*

The testatrix by her will and codicil, both dated 10th January, 1896, gave to two of her executors legacies "free of legacy duty," she also gave other legacies, including legacies to her husband. She then devised real estate to her husband for life, and after bequeathing certain annuities she gave her personal estate to her executors and directed "after payment of all and singular my debts, funeral and testamentary expenses, including death duties" and payment of all legacies, the executors to invest the same and

pay the income to her husband for life. The testatrix died on the 2nd December, 1918. The executors took out a summons to determine whether (*inter alia*) (a) the Estate Duty on the real estate, and (b) the legacy and succession duties payable under sect. 58 (2) of the Finance (1909–10) Act, 1910, on the husband's interests ought to be paid out of her residuary estate.

Held by Eve, J. (on 30th January, 1920), that none of these duties fell to be payable out of the residuary estate.

II. *As to property passing under deeds or wills (other than deceased's) and* inter vivos *gifts.*

(a) As to property of which the deceased was life tenant under a will.

In re Power, Power v. *Howell.*

In this case the deceased was life tenant of real estate under the will of her husband (who died in 1882), and on her death in 1898 it was to be distributed in certain proportions among his children and subject thereto to a residuary beneficiary.

Kekewich, J., held (on the 16th November, 1898) that the Estate Duty was payable *pro ratâ* out of the shares of all the children and of the residuary devisee.

(b) As to property of which the deceased was life tenant under a settlement.

In re Tattersall's Settlement, Public Trustee v. *Tattersall.*

By deed, dated 1911, a wife settled certain shares upon trust out of the income to pay her husband an annuity of 400*l.* during their joint lives, and to pay the balance of the income to herself for life. On her death the trustees were to apply the income in payment of 400*l.* per annum to the husband for life, an annuity of 400*l.* for her son's benefit, and an annuity of 300*l.* for her sister for life, and subject thereto surplus income to her husband for life with remainders over.

The settlement contained a provision whereby in the event, which happened, of the total income of the shares falling below 1,250*l.*, the husband's annuity should be reduced to 400/1250ths of such income. No benefit accrued to the husband by the wife's death in 1913, the income released by that event being applied towards the satisfaction of the two new annuities which then became payable.

Claims for Estate Duty and Settlement Estate Duty arose by the wife's death on the value of the shares, less the proportion required to provide the husband's annuity. The duty had been raised by means of a charge, but the trustees proposed to sell some of the shares to clear off the charge. As the effect of the sale would be to reduce the total income of the fund, the question arose between the husband and the other annuitants as to how the amount of his annuity should be determined after the sale.

Held (by Peterson, J., on 24th April, 1918) that the husband was not liable to pay any portion of the Estate Duty or Settlement Estate Duty; that while the charges remained the interest thereon should come out of the annuities other than his; and that after payment of the charges, the husband's annuity should be calculated with reference to a "total income" arrived at by adding to the income actually received by the trustees the interest which would have been payable if the charges were subsisting.

(c) As to the incidence of Estate Duty on sums covenanted to be paid on the deceased's death.

See *Re Gray, Gray* v. *Gray* (p. 149), also

Re Dowling, Dowling v. *Fenwick.*

By settlement on his marriage, dated the 10th November, 1890, J. D. covenanted within three years to pay 20,000*l.* to trustees to be held as to one moiety for J. D. for life with remainder to his wife if she survived, and as to the other moiety for his wife for life with remainder to J. D., with a further trust as to the whole trust fund for children or remoter issue as J. D., his wife, or the survivor should appoint, and in default in trust for their children at twenty-one or in the case of daughters marrying, and an ultimate trust for J. D. absolutely. The testator, J. D., made his will, dated the 23rd August, 1891, whereby he appointed trustees and executors, and directed payment of testamentary expenses and expenses of and incidental to the execution of the trusts of his will out of his converted residuary personal estate, and died, domiciled in England, on the 21st March, 1911. The 20,000*l.* was never paid in whole or in part, but interest at 4 per cent. was paid on that sum, and at J. D.'s death it, with accrued interest, remained due. The testator died possessed of approximately 58,000*l.* in Australia, and 25,000*l.* in England, 83,000*l.* in all, and upon that estate, the settlement debt of 20,000*l.* not being deducted, duty at 9 per

cent. with a deduction for sums paid for duties in Australia was paid in England under the Finance Act, 1894. One question on the executors' summons was whether the estate of the deceased was entitled to be recouped by the trustees of the settlement a rateable proportion of the Estate Duty so paid on the testator's estate in respect of the whole or any part of the sum of 20,000*l.* Sect. 112 of the Victorian Administration and Probate Act, 1890 (No. 1060), as amended by the Administration and Probate Act, 1903 (No. 1815), enacts that "every settlement of any property made after the 16th December, 1870, by any person containing trusts or dispositions to take effect, or which shall or may take effect, after his death" must, after the death of the settlor, be registered, and no trusts or dispositions are valid unless such settlement is registered, and the trustee of any settlement or some other person must, before registration, pay the duty prescribed by the Acts. Acting under advice that the settlement ought to be registered in Victoria, it was registered on the 17th July, 1911, and 2,168*l.* 5*s.* 11*d.*, including 1,200*l.* Registration Duty at 6 per cent. on the 20,000*l.* debt, was paid in Victoria out of the testator's estate by the executors, who had properly deducted the 20,000*l.*, and accrued interest as debts to be deducted from the testator's Victorian assets. The executors claimed that it was right they should be repaid the duty paid in Victoria on the registration of the settlement out of the English assets, or to deduct it from the amount to be paid under the covenant in the settlement. In order to obtain an abatement of duty in Victoria the settlement was disclosed.

Held (by Eve, J., on 2nd April, 1913), following *Re Gray, Gray* v. *Gray* (see p. 149), that, the 20,000*l.* not having been paid, the trustees of the settlement were creditors of the testator's estate, and although the executors were not entitled to any rebate of Estate Duty and the trustees of the settlement were not liable to duty under the Finance Act, 1894, there was no obligation on the settlement trustees to reimburse the Estate Duty or any part of it. Also that part of the Victorian assets was liable to discharge the testator's debt of 20,000*l.*, but it did not follow that the trustees would have to resort to the Victorian assets at all, and, had they done so, the obligation to register might have fallen on the testator's estate generally. The executors in registering the settlement in Victoria did not do so with a view to perfecting the security of the trustees of the settlement, and no part of the 1,200*l.* was chargeable against the 20,000*l.*, which was payable without deduction.

But where the covenanted debt is a charge on real estate, see

Cope v. *Breslin.*

The facts are as follows:—

The deceased, out of natural love and affection, mortgaged certain of his real estate to secure the payment to his son of a capital sum, but with a proviso that this sum should not be called in during his life, if interest at 5 per cent. per annum was paid thereon. By his marriage settlement the son settled this sum on the trusts therein mentioned.

The deceased also on his own second marriage covenanted to bring into settlement property worth 500*l.* per annum. He brought in certain real estate which was insufficient. On his death the mortgaged property was sold, and a sum had to be paid out of his residuary estate, to make up the amount of the mortgage, and also a further sum had to be paid out of his residuary estate, to make up the property agreed to be settled by his own marriage settlement.

Chatterton, V.-C., held that deceased's executor was entitled to be recouped by the respective settlements a proportionate part of the Estate Duty.

See also *Re Hacket, Hacket* v. *Gardiner*, p. 234; *Alexander's Trustees* v. *Alexander's Trustees*, p. 245; *Re Dixon-Hartland, Banks* v. *Hartland*, p. 246, and *Re Briggs, Richardson* v. *Bantoft*, p. 249.

(d) As to the incidence of Estate Duty on gifts *inter vivos.*

Re Beddington, Micholls v. *Samuel.*

Maurice Beddington had advanced two of his daughters, who were entitled to shares in his residuary estate, by gifts within twelve months of his death which were held to be an ademption *pro tanto* of their shares.

Byrne, J., held (on the 20th March, 1900) that the amount to be brought into account by the two daughters was the sum advanced, less the amount they were liable to pay for Estate Duty which "became a *charge* upon the property so given."

In re Walker.

The Estate Duty chargeable in respect of an *inter vivos* gift made by a person within three years of his death was held by Eve, J. (on the 24th February, 1914), to be payable by the donee and not out of the donor's residuary personal estate.

In re Croker, Croker v. *Croker.*

A testator, who died in 1914, had in 1908 and 1912 (the latter being within three years of his death) settled certain stocks on two of his daughters and their children, and these stocks had depreciated in value at the time of his death. By his will he gave his residuary estate in trust for all his children equally, subject to a proviso that for the purposes of division there should be brought into hotchpot, in respect of each of the two daughters or her children, the value of the trust funds which he had settled upon them.

Held by Sargant, J. (on 26th October, 1915), that the Estate Duty on the stocks had to be borne and paid out of the settled properties; that the sum to be brought into account under the hotchpot clause in respect of all the settled funds was the value of all the settled funds at the date of the settlement (and not at the date of the will), less the Estate Duty payable in respect of the funds settled within three years of the testator's death.

In re Baxter, Baxter v. *Baxter.*

The deceased made a deed of gift of his real estate to A., and died within twelve months thereafter. By his will, he directed payment out of his residuary estate of "all estate and other duties other than Settlement Estate Duties."

Held by Romer, J. (on 24th June, 1898), that there was no intention shown by the will to make A. a legatee to the amount of the duty in question; that "all duties" meant all duties on property passing under the will and did not cover the Estate Duty which A. had to pay on the gift to him.

See also the cases of *Re Orford; Neville* v. *Cartwright; Re Parker-Jervis; Re Fitzhardinge; Lord Fitzhardinge* v. *Jenkinson*, &c., &c., noted under sect. 14 (1).

Estate Duty on personal estate has been held to be a testamentary expense (see *Re Clemow*) and will therefore be payable out of any particular fund a testator may direct his testamentary expenses to be paid out of, but Estate Duty on real estate is not a testamentary expense. (See *Re Sharman, Wright* v. *Sharman.*) Real estate will therefore have to bear its own Estate Duty notwithstanding a direction to pay testamentary expenses out of residuary personal estate.

This is not affected by the Land Transfer Act, 1897. (See in *Re Palmer* (1900), W. N. 9.)

"The property shall not be so chargeable as against a bonâ fide purchaser thereof for valuable consideration without notice."—It would appear from this that if A. purchased in February, 1906, Blackacre from B., to whom it had been given by C. in January, 1906, and C. should die during the same year, that the Estate Duty payable by B. on Blackacre would not be a charge on Blackacre as against A., since he was without notice at the time of the purchase (but? as to whether he had not knowledge of the possibility of this charge).

As to notice, see notes on sect. 8 (18), and *Morris* v. *Morris's Trustees.*

Trustees of a marriage settlement are purchasers for valuable consideration. See

Morris v. *Morris's Trustees.*

Colonel Cheape died in 1890, having by will devised the estate of Killerndine to his wife, Mrs. Cheape (died 1895) for life, remainder to their daughter, Lady Morris, for life, remainder to her husband for life, remainder to her eldest son, Chas. Henry Morris, in fee.

Estate Duty to the amount of 232*l.* became payable on the death of Mrs. Cheape, and this duty was paid by Lady Morris, she being one of the persons accountable. Lady Morris and her husband petitioned to have this sum charged on the fee of the estate in the terms of sect. 23 (18) of the Finance Act, 1894, but C. H. Morris was no longer fiar of the estate. By ante-nuptial contract, in October, 1902, C. H. Morris had conveyed the estate to trustees. The parties to the contract were Sir John and Lady Morris, C. H. Morris, Miss Ellen Oswald (intended wife), and her mother, Mrs. Oswald. The trusts of the marriage contract were to the husband for life, remainder to the wife for life, remainder to the children of the marriage, remainder to the husband, his heirs and assigns. By the said marriage contract funds were settled on behalf of the wife. The petition was therefore against the trustees of the marriage contract in whom the estates were vested.

The questions for the consideration of the Court were:—

(1) Whether the marriage contract trustees were *bonâ fide* purchasers for valuable consideration within the meaning of sect. 9 of the Finance Act, 1894;

(2) If so, whether they were in the position of purchasers "without notice"; and

(3) Whether the petitioners were not barred from claiming

to have the estates charged with the duty by having been parties to the marriage contract.

Lord Pearson, on 24th December, 1904, held that the marriage contract trustees were *bonâ fide* purchasers for valuable consideration without notice within sect. 9 (1) of the 1894 Act. The trustees had no personal knowledge, and he did not think it was possible to point to anyone concerned in the transaction whose knowledge, actual or constructive, could be imputed to the trustees. The fact that the wife's law agents did not pursue their inquiries during the marriage negotiations was too remote to infer notice. The petition was therefore dismissed with costs.

As regards constructive notice, see, however, *Nesbitt and Potts' Contract.*

Land Transfer Act, 1897; *Sale by personal representative.*—Where the deceased dies after the commencement of the Land Transfer Act, 1897 (viz., 1st January, 1898), and his real estate (which has been registered under this Act) passes to his personal representative, who sells under the power contained in the Land Transfer Act, 1897, the Estate Duty does not remain a charge on the property in the hands of a *bonâ fide* purchaser, but shifts to the proceeds of sale. This is because, by sect. 13 of the Land Transfer Act, 1897, Estate Duty shall not, unless noted on the register, "affect a *bonâ fide* registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof," and by Rule 210 of 1903 (Rule 173 of 1898) notice of liability to duty is not to be entered on the register in the case of a sale by the personal representative.

Sect. 13 of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), is as follows:—

(1) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall enquire as to Succession Duty and Estate Duty.

(2) If, on such application, it appears that there is, or is capable of arising, any such liability to Succession Duty or Estate Duty as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3) Succession Duty and Estate Duty shall not—

(a) unless so noted on the register; or

(b) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising; or

(c) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a *bona fide* registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

Since the Estate Duty in respect of property which does not pass to the deceased's executor "as such" is a charge on such property, this duty may be deducted before paying Succession Duty thereon. The manner of taking the deduction is shortly summarised as follows :—

Deduction of Estate Duty in Succession Duty Accounts.

A. PROPERTY PASSING UNDER DECEASED'S WILL OR INTESTACY.

I. *Real Estate.*

(a) If the successor is *competent to dispose.* The actual amount of Estate Duty is deductible in the Form 6 (1) against the principal value of the real estate, and this is deductible whether the devise is "free of duty" or not, because of the words in sect. 18 (1) of the Finance Act, 1894, "after deducting the Estate Duty payable in respect thereof on the said death and the expenses, if any, properly incurred of raising and paying the same."

If, however, the devise is "free of duty," the freedom from the Estate Duty is a legacy to the devisee of the amount of such duty, and such amount is itself chargeable with Legacy Duty. The simplest course, therefore, is to take no deduction for the Estate Duty in the Succession Duty account.

(b) If the successor is *not competent to dispose.* Interest at 4 per cent. (or, if the duty is actually raised by a mortgage on the property, at the rate fixed in such mortgage) on the Estate Duty is deductible in the Form 6 against the annual value of the property. If, however, the devise to the successor for life is "free of duty," no deduction can be taken in the Succession Duty account.

II. *Leaseholds.*

Since the Estate Duty is not a charge on the leaseholds (they pass to his executor as such), it cannot be deducted in the Succession Duty account in respect thereof, whether the successor takes absolutely or for life, unless by reason of a deficiency of the residuary personal estate the Estate Duty or a part thereof actually falls to be paid out of the leaseholds.

B. PROPERTY PASSING UNDER A TITLE OTHER THAN DECEASED'S WILL OR INTESTACY.

(a) If the title is the will of a testator dying after the 1st August, 1894, on whose death the Estate Duty was paid, the present deceased being a life tenant only.

Real Estate and Leaseholds.

Since on the death of the original testator the charge of Estate Duty was fixed by this sub-section in the manner stated under heading A., the Estate Duty may be deducted, or is not deductible, in the same manner as stated in respect of the deceased's own real and leasehold property, provided the Estate Duty remains charged on the property. The deduction of any Estate Duty payable by reason of the life tenant's death will be as at (b) below.

(b) If the title is the will of a testator dying on or before 1st August, 1894, or a settlement by deed (in contradistinction to a will) of whatsoever date.

Real Estate and Leaseholds.

In this case it will be observed the Estate Duty on the leaseholds is a charge thereon, therefore the Estate Duty in respect of the real or leasehold property is deductible in the same manner as in the case of the deceased's own real estate under heading A.

Example, as to leaseholds :—

A. (who died in 1874) bequeathed leaseholds and residuary personal estate to B. for life (died 1912), and then as B. should absolutely by will appoint (not exercised), in default, leaseholds to C. (A.'s nephew) absolutely, and residuary personal estate to D. (A.'s nephew) absolutely. Since the leaseholds did not pass to B.'s executor as such, the Estate Duty in respect thereof is a charge thereon, and is deductible by C. against the principal value before paying Succession Duty.

(c) Pure personal estate passing under a settlement by deed (in contradistinction to a will) whenever made.

If the successor takes absolutely, the actual amount of the Estate Duty is deductible in the Form 4.

If the successor takes for life, a deduction may be made in the Form 5 against the annual income of the settled funds of a

percentage calculated at the same rate as the Estate Duty paid. For instance, if the rate of Estate Duty paid is 6 per cent., then 6 per cent. may be deducted from the annual income of the settled funds in respect of the Estate Duty.

These deductions can only be made if the Estate Duty has not been actually raised by a sale of a part of the trust funds.

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate Duty, the Commissioners shall grant a certificate of the Estate Duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

"**Application.**"—This can only be made by or on behalf of a person who has paid the Estate Duty.

"**In the prescribed form.**"—All forms are to be as prescribed by the Commissioners. (See sect. 8 (14).) The forms under this sub-section are: No. 080 for England, and C. (a) for Ireland.

This sub-section only applies to property which does not pass to the executor *as such*, because the certificate is evidence that the amount of duty named therein is a first charge on the lands, &c. (See next sub-section.) A certificate, therefore, will not be granted in respect of the deceased's own leaseholds, although it will be granted in respect of leaseholds passing under a settlement.

The manner of carrying this charge into effect in Scotland is stated in *Re Laurie*, 25 S. S. C. 4th Series, 636, where a limited owner having paid the Estate Duty on the entailed real estate, petitioned the Court for authority to grant a bond and disposition in security over the entailed estate for the amount so paid. It was held he was entitled to execute such bond for the duty, but not for the expenses of paying the duty nor of the petition.

He would, of course, have been entitled to the *charge* on the estates without actually executing such a bond, see *Lord Advocate* v. *Countess of Moray* (p. 220).

(3) Subject to any repayment of Estate Duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

It will be observed that the certificate is conclusive evidence of the charge of duty, *after* the debts and incumbrances that can be deducted, but *before* voluntary debts or other incumbrances that have not been allowed to be deducted in ascertaining the value of the property.

Any return of duty is to be made to the person holding the certificate.

(4) If the rateable part of the Estate Duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

This sub-section applies to property which does not pass to the executor *as such*. (See cases given under sub-sect. (1).)

An executor who pays the Estate Duty on his testator's real estate cannot (unless otherwise agreed upon) insist on the devisee of the real estate repaying him in one sum, and therefore, before paying such duty, he should agree with the devisee how it is to be repaid, or the devisee may pay him by the instalments provided for in sect. 6 (8).

"**With the same interest**," viz., 3 per cent. (see sect. 18 (1) of the Finance Act, 1896); 4 per cent. after 30th July, 1919.

(5) A person authorised or required to pay the Estate Duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

The terms of this sub-section are sufficiently wide to include the free personal estate of the deceased which passes to his executor "as such" (see *Berry* v. *Gaukroger*), but the better opinion would seem to be that sect. 9 only deals with property which does not pass to the executor "as such."

"**A person authorised**"—*i.e.*, the executor under sect. 6 (2).

"**Or required.**"—Any of the persons mentioned in sect. 8 (4) who pays the Estate Duty, would appear to have the powers under this sub-section.

"**Property**"—*i.e.*, property which does not vest in the executor as such.

"**Whether the property is or is not vested in him**"—*e.g.*, a tenant for life, whether the legal estate is in him or not.

"**To raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof.**"—As to whether interest is *properly incurred*, see

Re Earl Howe's Settled Estates, Earl Howe v. *Kingscote.*

This was a summons by the fourth Earl Howe, who became entitled, as tenant for life in possession of the family estates, on the death of the third earl on the 25th September, 1900, under an indenture of re-settlement of the 31st May, 1883, asking whether he was entitled to raise by sale, mortgage, or charge of the estates (1) the second instalment of Estate Duty payable on the death of the third earl in respect of the settled estates due on the 25th September, 1902; and (2) the interest which became payable on that date in respect thereof on such instalment and on future instalments.

Buckley, J., held that sub-sect. 5 of sect. 9 does not empower a tenant for life to raise, by mortgage of the inheritance, the interest on the instalments of the Estate Duty.

The Court of Appeal (Collins, Romer, and Cozens-Hardy, L. JJ.) affirmed his decision on the ground that the tenant for life could not say the interest had been "properly incurred" by him, it was his duty to keep down the interest himself.

Also

Re Earl of Egmont's Settled Estates, Lefroy v. *Egmont.*

Prior to the 15th August, 1889, the Egmont estates stood settled to the use of the seventh earl for life, with remainder to the use of the eighth earl in tail. Heirlooms were settled to go as far as the law would allow on the same trusts. By re-settlement of the 15th August, 1889, the seventh and eighth earls, having disentailed, re-settled the estates and heirlooms on the seventh earl for life, with remainder to the eighth earl for life, with remainders over. The re-settlement contained a power to the eighth earl to appoint a jointure of 2,000*l.* per annum "free from all deductions," which he exercised by a deed of the 24th September, 1897, by appointing a yearly rent-charge of 2,000*l.* "free from all deductions" to his wife Kate, Countess of Egmont, during her life, to commence on his death.

The seventh earl died in 1897, and the eighth earl died in 1910.

Estate Duty and Succession Duty became payable on the death of the seventh earl on the heirlooms, but such duties were not then paid, and were therefore, in 1911, payable with interest.

The trustees had in their hands investments representing capital moneys and rents accrued during the lives of the eighth and ninth earls.

A summons was taken out to determine (1) how the duties and interest on the heirlooms should be borne, and also (2) how the Succession Duty payable on the death of the eighth earl in respect of the 2,000*l.* jointure should be borne.

It was held (by Warrington, J., on 7th December, 1911) that as to (1) interest on both the Estate Duty and Succession Duty should be paid out of the income of the estate during the lifetime of the two successive tenants for life. As to the Estate Duty there was no question, for under sect. 9 (5) of the 1894 Act it could be paid out of the capital moneys. With regard to Succession Duty the question was more difficult, but as the proceeds of sale of the heirlooms were applicable in the same way as capital, the capital moneys could be expended in discharging the charge on the heirlooms. As to (2) having

regard to the words "free from all deductions," the Succession Duty on the jointure ought to be paid out of the capital moneys.

An heir of entail in possession of a Scottish entailed estate who has the right under this section to charge the estate with the appropriate amount of Estate Duty and Settlement Estate Duty, is not entitled to burden the estate with any sum due from him for interest. (See *Robertson, Petitioner*, (1914), 1 S. L. T. 492.)

As to *expenses* properly paid, see *Re Laurie* (p. 214), where it was held a tenant for life was not entitled to charge the fee with the expenses of paying the duty or of the petition to the Court.

In *Harris's Trustees* v. *Harris*, 41 S. L. R. 357, the expenses of ascertaining the duty were allowed to be charged on the estate, but not the costs of the petition for authority to charge.

In re MacKechnie.

A life tenant of lands in Scotland applied under sect. 23 (18) (a) to the Court for an order of sale and payment of Estate Duty and expenses, and the Lord Ordinary (Lord Pearson) authorised the payment of the expenses out of the sale moneys.

But see in *Re Stewart Menzies*, noted under sect. 23 (18), on p. 314.

The Lord Ordinary, in the latter case, distinguished it from that of *In re MacKechnie* because in *In re MacKechnie* there was a sale of part of the estate, to pay the duty, and the statute by sect. 23 (18) (a) expressly places the surplus price at the disposal of the Court, whereas in *Re Stewart Menzies*, a bond and disposition in security only was required, which by sect. 23 (18) (b) had to be "for the amount of the said duty."

See also *Turnbull* v. *Turnbull* (p. 314).

(6) A person having a limited interest in any property, who pays the Estate Duty in respect of that property, shall be entitled to the like charge, as if the Estate Duty in respect of that property had been raised by means of a mortgage to him.

"**A person having a limited interest.**"—For example, a tenant for life.

A tenant in tail in possession who succeeds to land and has not barred the entail is a "person having a limited interest." See

In re Anson, Buller v. *Anson.*

Sir John W. H. Anson, who died 2nd day of August, 1873, by his will devised certain real estate (in events) on the death of Sir William Anson (died June, 1914) to Sir Denis Anson in tail male. Remainder (in events) to Sir John H. A. Anson in tail male. Sir Wm. Anson by his will devised his real estate to Sir Denis Anson in tail male, with remainder to Sir John H. A. Anson in tail male.

On Sir William's death, Sir Denis became tenant in tail male of the realty under both wills, and he never disentailed.

On the death of Sir Denis (on 3rd July, 1914), the infant defendant, Sir John H. A. Anson, became tenant in tail in possession of all the real estates under both wills.

An originating summons was taken out by the trustees of the will of Sir John W. H. Anson and the executors of Sir William R. Anson, to decide who was to bear the Estate Duty in respect of the said real estates passing on the death of Sir William Anson. The question depended on the meaning of the words, "a person having a limited interest," in sect. 9 (6) of the Finance Act, 1894.

It was held (by Sargant, J., on 29th July, 1914) that Sir Denis had only a limited interest in the estates. It was true that he had a statutory power given him by the Act for Abolishing Fines and Recoveries, under which he could have enlarged his interest into an estate in fee simple without anybody's consent; but that statement seemed to involve saying that Sir Denis had only a limited interest, coupled with a power of enlargement. If the Estate Duty was paid by the executors of Sir Denis, they would be entitled to a charge on the estate as if there had been a mortgage to Sir Denis to secure the amount. That would involve his estate in having to pay interest on the amount of duty for the very short time only during which he was entitled to receive the income. [NOTE.—As the first instalment of the Estate Duty on Sir William Anson's death would not be payable until June, 1915, and interest on the Estate Duty would not commence to run until that date, Sir Denis's estate would in fact have to bear no interest on the Estate Duty.]

"**Who pays the Estate Duty.**"—This meets the case of a limited owner paying the Estate Duty out of his own money.

"**Shall be entitled to the like charge, &c.**"—A tenant for life who pays the Estate Duty has therefore a charge on the fee. (See *Re Laurie* (p. 214), *Earl Howe* v. *Kingscote* (p. 216), and *Turnbull* v. *Turnbull* (p. 314).

Lord Advocate v. *Countess of Moray* (*House of Lords*).

The facts in this case were as follows:—

An heir of entail, on succeeding to an entailed estate, availed himself of the option under sect. 6 (8) of the Finance Act, 1894, of paying the Estate Duty in sixteen half-yearly instalments.

During his life he paid eleven instalments out of his own funds, but he did not apply under sect. 9 for a certificate of the duty so paid or take any steps (as in *Re Laurie*) to charge the instalments paid on the estate. In an action by the Crown against his executors for payment of Estate Duty on the property (viz., the charge), passing to them, in respect of the payment of the instalments: it was held (by Halsbury, L. C., and Lords Macnaghten, Davey, James, Robertson, and Dunedin) that such instalments became a statutory charge on the estate by virtue of sect. 9 (6), were assets in the hands of the executors, of which the deceased was competent to dispose at the time of his death, and that Estate Duty was payable on them. The decisions of the Scotch Courts below were reversed.

Re Mexborough, Savile v. *Mexborough.*

John Chas. George, Earl of Mexborough, who died 17th August, 1899, by a codicil to his will, executed after the passing of the Finance Act, 1894, bequeathed to his eldest son, to whom the entailed estates would pass on the testator's death, a sum of money "sufficient to pay and discharge all Estate Duty" which might be payable by him.

The residuary legatee claimed that the legacy was impressed with a trust to pay the Estate Duty, and that the legatee consequently lost his right to recoup himself by a charge on the settled estates under sect. 9 (6) of the Act, the object of the gift being to discharge the Estate Duty and so to free the settled estates from liability. The legatee, on the other hand, claimed that the legacy was one for his own benefit, being a gift measured by the amount he would have to pay for Estate Duty.

Held (by Williams and Cozens-Hardy, L. JJ., Stirling, L. J., *dissentiente*, in the Court of Appeal, reversing the decision of Farwell, J.) that there being no words indicative of a desire on the part of the testator to give the legatee absolute property, the inference could not be drawn that he should take the legacy unfettered by any purpose of the testator, and that this was not a legacy with a motive added, but an imperative direction, the purpose being the discharge of the Estate Duty.

On appeal to the House of Lords, where the case was intituled *Earl of Mexborough* v. *Savile*, the House of Lords (Lords Halsbury, Ashbourne, Macnaghten, Shand, Davey, Robertson, and Lindley), however, reversed the decision of the Court of Appeal, and followed the opinions of Stirling, L. J., and Farwell, J.

The Lord Chancellor (Lord Halsbury) said he could find no words in the will throwing any obligation on the legatee to pay the Estate Duty, and therefore he took free from any such obligation.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate Duty in respect of property comprised in the settlement and held upon the same trusts.

"**Settlement**" is defined in sect. 22 (1) (h) and (i).

"**Capital money arising under the Settled Land Act, 1882.**"—For what are capital moneys under this Act, see Hood and Challis' Conveyancing and Settled Land Acts.

10.—(1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner

and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

By sect. 60 (3) of the 1910 Act, where the question in dispute is the question of the value of any real (including leasehold) property, the right to appeal under sect. 10 of the 1894 Act is taken away, and any person aggrieved by the decision of the Commissioners may appeal against the decision in the manner prescribed by Part I. of the 1910 Act. (See sect. 33 of that Act.)

This sub-sect. 10 (1) would appear to be only applicable where the liability to some duty is admitted, but the amount only is in dispute.

Sub-sect. 4 provides for the giving of security.

The appeal is to the Divisional Court. (See Rules of the Supreme Court, 1883, Order LIX. r. 1 (d).) But see sub-sect. 5, where the property is below 10,000*l.* in value.

The *Cowley case* was commenced by a petition under this section. So also were *Re Scott*, *Re Vernon*, *Re Campbell*, *Re Cochrane*, and *Re Eyre*.

"**By rules of Court.**"—The rules regulating proceedings in appeals under this section are dated 14th January, 1895. (St. R. & O., 1895, No. 11 (L. 1).) The Court may refer any question of disputed value to appointed valuers. (See sub-sect. 6.)

"**The excess shall be repaid.**"—The Court may order interest at 3 per cent. to be also paid. This was done in *Sprot's Trustees* v. *Lord Advocate* (1902), 10 S. L. T. 293.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

Leave to appeal should be granted where the matter is one of principle, which has been decided for the first time. (See *Ex parte Gilchrist*, 17 Q. B. D. 521.)

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any

excess of duty repaid by them interest at the rate of 3 per cent. per annum for such period as appears to the Court just.

The general rule is that the Crown neither pays nor receives costs, but this sub-section puts the question of costs in the discretion of the Court.

Interest is only claimable as of right, under sect. 8 (12), where the return of duty is caused by over-valuation of the Commissioners.

Sprot's Trustees v. *Lord Advocate.*

This case arose out of *Lord Advocate* v. *Stewart* (the facts of which are given on p. 311). As a result of that case the Commissioners returned the Estate Duty that had been wrongly paid, but refused to pay any interest thereon, considering that they had no power to do so unless the case came within sect. 8 (12).

The Lord Ordinary (Lord Stormonth Darling) held that interest was payable by the Commissioners on the Estate Duty as from the 2nd March, 1900, the date when the claim for repayment was first formally made.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of 3 per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

It would appear that either the duty (or some part) must be paid or security given for the whole or unpaid part; leave to

appeal, it is thought, would not be given without payment and without security.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court.

"**May**."—This sub-section is permissive and not obligatory.

It is sufficient if the Commissioners put the value of the property at not more than 10,000*l.* to enable the appeal to be made to the County Court.

Sect. 22 of the Finance Act, 1896, adds the following proviso to this sub-section: "Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal." No leave (it will be observed) is required of either Court.

(6) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act, in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

There is no similar provision for the appointment of valuers in Ireland.

The following is the scale of charges fixed by the Surrey County Council:—

SCALE OF CHARGES for the remuneration of the valuers:—

	£	s.	d.	
Where the value of the estate, as alleged by the Commissioners of Inland Revenue, does not exceed 1,000*l.*	3	3	0	per diem.
Above 1,000*l.* and not exceeding 10,000*l.*	5	5	0	„
Above 10,000*l.* and not exceeding 50,000*l.*	7	7	0	„
Above 50,000*l.*	10	10	0	„

Exclusive of travelling and hotel expenses. The scale to be subject in all cases to any special directions of the Court, and to any agreement between the parties.

11.—(1) The Commissioners on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate Duty the property shown by the certificate to form the estate or part thereof as the case may be.

"**The Commissioners on being satisfied.**"—The Commissioners are not bound to give this certificate unless they are satisfied the full duty has been or will be paid, but it is conceived that any party aggrieved by the decision of the Commissioners may appeal under sect. 10 (1) to the Court.

"**Estate Duty**" includes Settlement Estate Duty. (See sect. 5 (1) (a) and *Gribble* v. *Webber*.) If Settlement Estate Duty is payable, it must be paid before a certificate that the full Estate Duty has been paid in respect of such property can be issued.

"**Give a certificate to that effect.**"—There is no charge to be made for this certificate (sect. 8 (15)), and it is issued for the whole or any part of an estate.

This certificate is only given to the accounting party. The application for such certificate must, therefore, be made by, on behalf of, or with the authority of the person accounting for the Estate Duty.

The application should be made on Form 25 in duplicate. A certificate under this sub-section does not apply to a deceased

person's free personal estate, including leasehold property, upon which the Estate Duty does not form a specific charge.

The certificate under this sub-section is to be distinguished from that in the next sub-section in that it discharges the property only, but does not discharge the accounting party from his *personal* liability.

If obtained by fraud or failure to disclose material facts, it only discharges a *bonâ fide* purchaser without notice. (See sub-sects. (3) and (4).)

An abstract of title which does not show that Succession and Estate Duty, to which the property became liable on the death of a previous owner from whom title is traced, have been paid, or that no duties were payable, is defective; and proof that such duties have been paid, or are not payable, must be furnished by the vendor free of expense to the purchaser. (*In re Conlon and Faulkener's Contract.*)

(2) Where a person accountable for the Estate Duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate Duty, and the Commissioners shall give a certificate of such discharge.

The certificate under this sub-section discharges both the property and the applicant, so far as regards that property.

"**After the lapse of two years from such death.**"—By sect. 14 of 7 Edw. 7, c. 13 (Finance Act, 1907), the Commissioners may, if they think fit, entertain an application under this sub-section at any time, and notwithstanding the two years may not have expired.

"**A full statement.**"—This is to be in such form as the Commissioners may require. (See sect. 8 (14).) This sub-section

applies to all the property passing on the death, whether to the executor as such or not.

See next sub-section as to effect if obtained by fraud.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate Duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for.

A certificate obtained by fraud protects neither the property (except in the hands of a *bonâ fide* purchaser for value without notice) nor the accountable party. A certificate properly obtained prevents a higher rate of duty being charged by reason of other aggregable property being afterwards discovered (sect. 8 (7)), but it does not prevent such after discovered property being charged with the proper rate, ascertained by aggregating it with the property in the certificate.

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate Duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

This sub-section provides that a purchaser who has bought property with notice of its liability to the charge of Estate Duty, shall be exonerated from such charge by the certificate, although obtained by fraud, provided he is *without notice* of such fraud.

"**A bonâ fide purchaser**" and "**notice.**" — See notes to sect. 8 (18).

12. The Commissioners in their discretion, upon application by a person entitled to an interest in

expectancy, may commute the Estate Duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at 3 per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

"**The Commissioners in their discretion.**" — There would appear to be no appeal against the refusal to commute.

"**Upon application.**"—This should be made in writing to the Controller of the Estate Duty Office, Somerset House, London, or to the Registrar of Estate Duties, Edinburgh or Dublin, as the case may be. The application should disclose :—

(a) The title to the property and, if this is a will or intestacy, the exact dates of the death and grant of representation to the estate of the deceased. If under a deed, the deed or a complete copy should be sent for notation.
(b) The description and value of the property to be dealt with.
(c) The reason commutation is desired.
(d) If a sale is taking place, how the proceeds of sale are to be dealt with.

It may be observed that if the proceeds of sale are to be divided between the tenant for life and the reversioner, having regard to the decisions in *Att.-Gen.* v. *Beech* and *Att.-Gen.* v. *De Préville*, there is no Estate Duty presumptively payable even if the tenant for life should die within a year, and therefore it is the practice not to commute Estate Duty, but to commute Succession Duty. Sect. 11 (1) of the Finance Act, 1900, does not affect this case.

If the life tenant is surrendering his life interest to the remainderman and the property is to be transferred to the latter absolutely, without any reservation to the life tenant of any kind, then Succession Duty is commuted, and not Estate Duty, but with an intimation that if the tenant for life should die within three years of such surrender, the provisions of

sect. 11 (1) of the Finance Act, 1900, and sect. 55 of the 1910 Act, would apply, and Estate Duty become payable.

On the other hand, if property is being sold and the proceeds of sale are to be held on the same trusts as the property was held prior to the sale, it is the practice to commute Estate Duty.

"**Cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate, &c.**"

Having regard to the almost insuperable difficulty of ascertaining what would be the true rate of duty at the death of the expectant deceased, in practice the rate is taken to be that which would be payable on the whole of the property passing under the settlement in question ; for instance, if Estate Duty is to be commuted on 1,000*l.*, part of a settled fund of 20,000*l.*, the rate on the 1,000*l.* is taken at 4 per cent.

"**And interest being reckoned at 3 per cent.**"—The duty is calculated at the correct rate, say, for instance, in the above example 4 per cent. on 1,000*l.* = 40*l.*, and this sum is discounted on a 3 per cent. basis according to the age of the life tenant. Sect. 30 of the Finance Act, 1919, fixes 4 per cent. as the rate of interest on and after 31st July, 1919, therefore in the future the duty will be discounted apparently on a 4 per cent. basis.

"**Certificate of discharge.**"—The provisions of sect. 11 do not in terms apply to this certificate, but if it is obtained by fraud, it is conceived such certificate would not protect the fraudulent accountable party.

The property on which Estate Duty has been commuted is, in practice, required to be aggregated, with the rest of the aggregable estate, on the death of the expectant deceased in order to ascertain the rate of duty payable on such other property.

The form for commutation of Estate Duty is No. 20 (in duplicate).

No commutation is to be prejudicially affected by reason of a marriage between a man and his deceased wife's sister being deemed legal under the Deceased Wife's Sister's Marriage Act, 1907. (See sect. 2 of that Act.)

13.—(1) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property

which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly.

This section is, in practice, put in force in those cases where the interests of the parties are so complicated that they themselves are unable, without litigation, to define their own rights, and these have been compromised by a deed of arrangement, or where a fund in Court has remained for half a century unclaimed, and numerous deaths, wills, and settlements affect its ultimate destination, but owing to the smallness of the amount and multiplicity of the accounts, a composition is beneficial to the parties and the Revenue.

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

The *property* would appear to be discharged in the hands of a purchaser even with notice of a fraud.

(3) In this section the expression "death duties" means the Estate Duty under this Act, the duties mentioned in the first schedule to this Act and the

Legacy and Succession Duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

"Death Duties" therefore are :—
(1) Estate Duty and Settlement Estate Duty.
(2) Probate Duty.
(3) Account Duty.
(4) Legacy and Succession Duties (including the additional Succession Duties imposed by sect. 21 of the Customs and Inland Revenue Act, 1888).
(5) The temporary Estate Duty imposed by sects. 5 and 6 of the Customs and Inland Revenue Act, 1889.

14.—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate Duty may be recovered by the person, who being authorised or required to pay the Estate Duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

"**In the case of property which does not pass to the executor as such.**"—This property will include everything passing on the death of the deceased, except his free personal estate in the United Kingdom and personal property over which deceased had and exercised an absolute power of appointment. (See notes under sect. 9 (1).)

"**May be recovered.**"—That is, as a debt from the person entitled to the charge.

"**By the person who, being authorised or required to pay.**"—That is, the executor (as to property of which the deceased was competent to dispose), trustees, beneficiaries, &c.

"**The Estate Duty.**"—This includes Settlement Estate Duty. (See *Re Duke of St. Albans, Loder* v. *Duke of St. Albans*, and *Re Webber, Gribble* v. *Webber*.).

"**Any sum charged.**"—If the sum charged is a capital sum, the amount of duty thereon will bear the same proportion to the whole duty as the capital sum bears to the whole property.

* *Re The Earl of Orford; Neville* v. *Cartwright; Cartwright* v. *The Duc del Balzo.*

By marriage settlement, in 1841, funds amounting to 100,000*l.* were settled upon trusts, to be invested in land and conveyed to the husband for life, with remainder, in events, to raise portions, &c., to the amount of 40,000*l.*, and subject thereto as the wife should absolutely by will appoint. The wife died in 1886, having by her will appointed 35,000*l.* to A. and residue to other persons.

It may be observed the fund was equitable real estate at her death. The husband died December, 1894. It was admitted Estate Duty was payable on his death by the trustees of the settlement in the first instance. The question raised was: How was the duty to be borne amongst the appointees of the 35,000*l.* and residue? North, J., held, on construction of above sect. 14, that in all cases where duty becomes payable, for which the executor is not made accountable by sect. 6 (1), the duty must be paid ultimately by the persons beneficially entitled in proportion to their shares, and not thrown wholly on the residue.

If the charge is an annuity, then the method of arriving at the duty is as laid down in the following case :—

Re Parker-Jervis, Salt v. *Locker.*

In 1861 donees of a power charged certain settled estates with a jointure of 1,000*l.* per annum in favour of the wife of one of the donees "without any deduction whatsoever except in respect of income tax." On the death of the surviving donee in 1896, the jointress became entitled to receive her jointure.

Held (by Kekewich, J.) that Estate Duty, in respect of the jointure, must be borne by the inheritance and was not payable by the jointress, as the words amounted to an express provision to the contrary within the Finance Act, 1894, s. 14 (1).

The jointure was valued, for the Estate Duty, at the same number of years' purchase as the estates themselves had been valued at, and was treated as an estate by itself because it passed out of the family of the deceased, and not aggregated with the estates themselves, and Kekewich, J., supported this method.

On the death of the same deceased person, his widow became

* This is the title in the L. T. R. *In re the Countess of Orford*, in the L. R.

entitled to another jointure of 500*l.* per annum charged by him on the settled estates.

Held that the rateable part of the Estate Duty, payable in respect of this jointure, must be assessed not on an actuarial valuation of the jointure, but on so much of the settled estates as might be required to produce 500*l.* per annum, and that the jointress was entitled to a charge on the settled estates to meet the duty payable in respect of the jointure, paying the interest thereon during her life at such rate as might be negotiated.

Re Meyrick, Meyrick v. *Hargreaves.*

By a revocable post-nuptial settlement, personal estate was settled on trust for the settlor for life and after his death, as to funds of a specified value, on certain trusts, and as to residue in trust for the settlor absolutely.

Held (by Chitty, J.) that the appropriated funds did not constitute an "incumbrance" within sect. 7 (1) of the Finance Act, 1894, and that the executor of the settlor who had paid the Estate Duty on the whole of the funds comprised in the settlement, was entitled to receive from the persons entitled to the appropriated funds, a rateable proportion of the Estate Duty.

The case of *Re Meyrick, Meyrick* v. *Hargreaves* seems to be in conflict with

Wade v. *Wade.*

By an indenture of the 11th August, 1858, on the second marriage of Robert Craven Wade to Frances Sarah Ann Wade, the husband assigned a policy of insurance on his own life for 5,000*l.* to trustees in trust to raise thereout on the husband's death 4,000*l.* to be held on the trusts of an indenture of even date, and to pay the balance to the husband's executors.

By the settlement of even date it was declared the trustees should hold said 4,000*l.* (in events) in trust for the said wife for life, and then for the children of the marriage (there were two such) as therein mentioned.

By an indenture of the 7th July, 1864, the said R. C. Wade assigned, or purported to assign, the said policy to trustees in trust to increase the portions to which his younger children, by his first wife, were entitled as therein mentioned; such increased portions more than exhausted the balance of the said policy.

The policy was sold in 1884 in an action in the Chancery

Division, and the proceeds were ordered to be invested and accumulated during the life of the said Robert C. Wade.

Robert C. Wade died on the 6th April, 1898, and there was then in Court 4,496*l.* 2*s.* 3*d.* 2¾*l.* Consols, and 29*l.* 17*s.* 7*d.* cash on deposit representing the said policy.

The trustees of the 1855 settlement, the second wife and her children petitioned the Court praying (*inter alia*) that the said Consols might be sold and the proceeds and said cash dealt with as follows:—

(1) That the Estate Duty on the said funds payable on the death of R. C. Wade might be paid.
(2) That 4,000*l.* might be paid to the trustees of the 1858 settlement.
(3) That the residue might be paid to the trustees of the 1864 settlement.

Held (by Kekewich, J., on 11th June, 1898) that sect. 14 of the Finance Act, 1894, was not intended to provide for the incidence of Estate Duty, but was intended to protect the executor or other person, who, as between himself and the reversioner, was called upon to pay the duty; the Estate Duty, therefore, must be borne by the residue remaining after payment thereout of the 4,000*l.*, and the prayer of the petition granted. Compare with the case of

Re Hacket, Hacket v. *Gardiner.*

The facts are as follows:—

H., by his marriage settlement, dated the 11th December, 1867, demised the M. H. estate, to which he was entitled as owner in fee, to the trustees of his settlement for a term of 1,000 years, upon trust after his decease, to raise the sum of 10,000*l.* out of the M. H. estate, and to hold the same upon the trusts therein declared. And by a supplemental settlement, dated the 17th March, 1884, the said H. charged the M. H. estate with a further sum of 4,250*l.*, secured in the same manner and to be held on the same trusts.

The said H. died on the 29th July, 1904, and his executor, under sect. 6, sub-sect. 2, of the Finance Act, 1894, paid the Estate Duty on the value of the whole estate.

Under sect. 7, sub-sect. 1, no deduction was allowed to be made from the value of the estate in respect of the charges for 14,250*l.* payable out of the M. H. estate. This was an originating summons by the executor and trustee of the will of H.

to have it determined whether he was entitled to recover from the trustees of the two settlements a portion of the Estate Duty attributable to the two charges.

Held (by Joyce, J., on 6th February, 1907) that the effect of sect. 9 was to make a first charge on the M. H. estate the amount of the Estate Duty which was levied or calculated to fall on the value of the whole estate, without making any deduction in respect of the two charges, as such deduction was not allowed to be made under sect. 7, sub-sect. 1. Therefore it was only just to the persons who took the M. H. estate that a portion of the duty should be borne by the persons entitled to the charge, which was the very thing provided for by sect. 14, sub-sect. 1. That section must be held to apply to this case, and the trustees were liable for Estate Duty so far as related to the amount of their charge.

Re Chisholm, Goddard v. *Brodie.*

By their marriage settlement of 9th April, 1851, James Chisholm (who died 31st September, 1899) and his wife (who died 24th September, 1901) were empowered, subject to their own life interests, to exercise a joint power of appointment over the funds settled by them among their children. In exercise of such power they appointed, subject to their own life interests, three sums of 10,000*l.* each, to three of their daughters. They also appointed the residue of the settled funds, up to the sum of 10,000*l.*, to a fourth daughter on her marriage, and James Chisholm covenanted with the trustees of her marriage settlement to make good any deficiency in her 10,000*l.* out of his own estate. The settled funds now amounted to 38,000*l.*

On a summons to determine how the Estate Duties and costs ought to be borne,

Held (by Kekewich, J.) that the Estate Duties payable on the death of James Chisholm and his wife, and the costs of raising and paying the same, ought to be borne by all the appointed funds rateably.

Berry v. *Gaukroger.*

The testator, John Berry, died on the 25th August, 1869, having by his will, devised and bequeathed his residuary real and personal estate to trustees, upon trust to sell the same, and pay his funeral and testamentary expenses and debts and the legacies therein before bequeathed, and to invest the residue,

and out of the income to pay his wife an annuity of 500*l.* a year, and to pay some other small annuities, and he directed, after his wife's death, his trustees should stand possessed of the trust funds on trust to pay thereout certain legacies, amounting in the aggregate to 9,000*l.*, and then to divide the residue amongst certain persons named.

An administration action was brought, and in the action a sum of Consols was carried over to the account of the widow's annuity.

The widow died on the 16th November, 1900. Under sect. 1 of the Finance Act, Estate Duty became payable on the widow's death upon so much of the fund as represented the proceeds of sale of the real estate of John Berry. Having regard to sect. 21 (1) of the Finance Act, 1894, Estate Duty was not payable so far as the fund represented the personal estate of John Berry.

The proportion of the fund representing real estate was ascertained or taken to be twelve-seventeenths of the total fund, and Estate Duty was therefore payable on such twelve-seventeenths.

A summons was taken out to decide how this Estate Duty was to be borne as between the pecuniary and residuary legatees. Buckley, J. (Chancery Division), held that it should be borne by the residuary legatees, but the Court of Appeal (Williams, Romer, and Cozens-Hardy, L. JJ.) reversed his decision and held that under sects. 8 (4) and 9 (1) the Estate Duty was to be borne rateably by the pecuniary and residuary legatees.

Cozens-Hardy, L. J., said: "It seems plain that the annuity fund was '*property*' '*passing*' on the death of the annuitant within the meaning of the Finance Act," and he based his judgment on sect. 8, sub-sect. (4).

He further added: "The pecuniary legacies must be regarded as property which passed to the legatees for a beneficial interest in possession on the death of the annuitant. The legatees were accountable to the Crown for Estate Duty. It was an old and well-established principle of equity that when several persons are liable in respect of one and the same obligation, the rights of the parties *inter se* are not affected by the circumstance that one of those persons has discharged the obligation. The Estate Duty ought, therefore, to be contributed rateably according to the beneficial interests in the fund. This was exactly the sort of case contemplated by sect. 14, sub-sect. (1)."

Re Charlesworth's Trust, Tew v. *Briggs.*

By a deed poll dated the 29th September, 1897, C. declared certain trust funds to stand upon trust for himself for life, and after his death for his wife for her life, and after her death as to one-half of the settled fund, viz., 10,000*l.*, as she should by will or codicil appoint, and in default of appointment to her next of kin, and as to the residue to stand upon trust for the settlor as part of his residuary estate. The settlor died in February, 1908, so that Estate Duty became payable in respect of the settled fund under the Finance Act, 1894. The widow executed her power of appointment over the 10,000*l.*, and died in 1911. The question then arose as to whether a proportion of the Estate Duty paid upon the settlor's death should fall upon the 10,000*l.* which passed to the widow's appointee.

Held (by Joyce, J., on 21st November, 1911) that the case fell within *Berry* v. *Gaukroger* (see p. 235), and that the Estate Duty payable upon the settlor's death must be apportioned between the two shares of the settled fund. Even if the 10,000*l.* was a charge on the settled fund, there were no words to show that it was to be a "clear" sum or anything of that sort, and sect. 14 (1) of the Finance Act, 1894, would apply.

Anderson's Trustees v. *Matthew.*

The deceased by his will (a trust disposition and settlement in Scotland) devised and bequeathed his paper-making business, with all the heritable and moveable assets belonging thereto, to A. and B. in equal shares, subject to a legacy of 40,000*l.* payable thereout to certain other persons. He directed his trustees, instead of conveying the assets of the business to A. and B., to form the business into a limited company and to allot the shares to A. and B. equally and to secure the 40,000*l.* by a bond upon the heritable property. The business assets were valued at about 58,000*l.* net, including about 21,500*l.* for the heritable property.

The Scottish Court of Session (Second Division) held (on 17th December, 1915) that under sect. 14 (1) the beneficiaries taking the 40,000*l.* must contribute rateably to the repayment of the Estate Duty on the heritable property to the executors.

The following case deals with the Estate Duty on legacies payable out of a mixed fund of proceeds of sale of real and personal estate.

Re William Spencer Cooper (deceased), Poë v. *Cooper.*

The facts are as follows:—

A testator, who died in 1906, gave his real and personal estate to trustees upon trust for sale and conversion, and directed that his trustees should, out of the moneys to arise from the sale, calling in, and conversion of or forming part of his real and personal estate, pay his funeral and testamentary expenses and debts, and the legacies bequeathed by his will or any codicil thereto, and make provision for the duty on any legacies bequeathed free of duty; and he bequeathed legacies of large amount.

An originating summons was taken out for the determination (*inter alia*) of the question whether the rateable proportion of the pecuniary legacies payable out of the real estate was liable to the Estate Duty payable in respect of it, or whether the legatees were entitled to require that such Estate Duty should be paid out of the rest of the estate. The legacies were payable *pro ratâ* out of the real and personal estate, and no question arose with reference to the Estate Duty on so much of the legacies as was payable out of the personal estate.

It was held (by Swinfen Eady, J., on 14th November, 1907) that the Estate Duty payable in respect of the real estate was not a "*testamentary expense*," and was not converted into a "*testamentary expense*" by the direction that "*testamentary expenses*" were to be paid out of a mixed fund, and that so much of the mixed fund given to the legatees as represented real estate should bear its own Estate Duty.

It would follow from this case that in *Re Trenchard, Trenchard* v. *Trenchard* (see p. 199), the widow's annuity of 500*l.* should have borne a proportion of the Estate Duty payable in respect of so much of the mixed fund as was attributable to real estate.

The following case deals with mixed funds, but the Court of Appeal's decision was based on the words of the will.

Re Sir R. W. H. Palmer, Leventhorpe v. *Palmer.*

A testator, who died in 1910, by his will, dated in 1907, devised his English and Welsh estates to his wife absolutely, and after devising his Irish estates, subject to certain life interests in trust for certain persons for interests partly in possession and partly in reversion, with remainders over, devised his residuary real estate upon trust for sale and

conversion, and to stand possessed of the clear money to arise from such sale as part of his residuary personalty. The testator then made and gave a number of specific bequests and pecuniary legacies, and also gave numerous annuities, some of which were settled as therein mentioned. The testator then declared: "I intend to give all the legacies and annuities hereby bequeathed, and I direct that the same shall be paid or appropriated free from Legacy Duty respectively." The testator bequeathed his residuary personal property, including the *clear* money arising from the sale of real estate (except Irish estates) thereinbefore devised upon trust for sale and conversion, upon trust after payment out of arrears of rent and ready money of funeral and testamentary expenses, debts, legacies, and annuities thereinbefore directed to be paid, and the *duties* on the legacies and annuities, "as well as all Settlement Estate Duty" as therein mentioned. By codicils to his will the testator repeated the declaration contained in his will as to legacies being paid free from Legacy Duty. An originating summons was taken out by the trustees of the will raising (*inter alia*) the question whether the pecuniary legacies and annuities settled and unsettled were given free of Estate Duty. For the legatees and annuitants, *Re Coxwell's Settlement, Kinloch-Cooke* v. *Public Trustee* (p. 244) was cited, and *Re Spencer Cooper, Poë* v. *Spencer Cooper* (p. 238) was distinguished. It was decided by Eve, J., that on the terms of the will the pecuniary legacies and annuities must bear a proportionate part of Estate Duty, but were not liable to Succession Duty. His Lordship followed *Re Spencer Cooper, Poë* v. *Spencer Cooper* (*ubi sup.*). On appeal:—

Held by the Court of Appeal (Cozens-Hardy, M. R., Fletcher Moulton and Buckley, L. JJ., on 20th February, 1912), without deciding or expressing any opinion one way or the other as to whether *Re Spencer Cooper, Poë* v. *Spencer Cooper*, was rightly or wrongly decided, that having regard to the words of this will, to hold the "clear" money arising from the sale of the real estate upon trust, &c., and the direction to pay "the duties" on the legacies and annuities on the true construction of the will, the legatees and annuitants were entitled to their legacies and annuities free from Estate Duty.

It is therefore considered that a legacy payable entirely or partially out of real estate should bear a proportion of the Estate Duty if there are no words in the will expressing a contrary direction.

This statement of the law is supported by

Re Charles Morrison (deceased), Morrison v. *Morrison.*

The testator, by his will, dated 1898, gave to his trustees the sum of 270,000*l.*, "subject to death duties," upon certain trusts. Numerous other legacies were given without any immediate reference to duties, but a clause in the will provided that :—

"All the legacies given by this my will shall (except where expressly stated to be subject to death duties) be paid free from duty, which (whether presently, or presumptively, or prospectively payable) shall be paid out of my general personal estate."

A final clause directed the trustees "to sell and convert into money my said real and personal estate . . . to pay the expenses of and incidental to the execution of the last preceding trust, and my debts, testamentary and funeral expenses, and in the next next place to pay, set aside, and permit pecuniary legacies bequeathed by this my will or any codicil thereto, and the duties on any legacies given free of duties, and to stand possessed of the surplus moneys on the trusts" thereinafter set out.

The testator died on the 25th May, 1909. A summons was taken out to determine whether the expression "subject to death duties" subjected the legacy to all duties including a proportionate share of Estate Duty, or whether only to the ordinary duty payable by law where not specially exempted.

It was held (by Parker, J., on 12th April, 1910) that only those duties which were payable and properly payable out of the legacy were to be borne by that legacy. In the events which had happened, apparently that would include all Legacy Duty in respect of personalty, and some Succession Duty payable in respect of the proceeds of sale of realty, and would also include such portion of Estate Duty as was properly apportionable to the proceeds of the sale of realty, or to that portion of the legacy which could properly be said to be payable out of the proceeds of the realty, and also the Settlement Estate Duty.

The words "an expense incident to the trusts" were, however, held to include the new 1 per cent. duties imposed by sect. 58 (2) of the 1910 Act in *Re Briscoe, Royds* v. *Briscoe.*

A direction to pay off the incumbrances on one estate out of the rents of another estate was held not to create a charge on the latter estate within this sub-section. See

Re Earl of Stamford and Warrington, Payne v. *Grey.*

The Earl of Stamford and Warrington (who died on the 2nd January, 1883), by his will, settled his Staffordshire, Leicestershire, and Cheshire estates to different uses in strict settlement. He settled his Lancashire estates to the use of trustees for a term of 1,000 years, and subject thereto as to one moiety to the uses declared of his Staffordshire estate, and as to the other moiety to the uses declared of his Leicestershire estate. At the testator's death there were various incumbrances of varying amounts on each of the four estates. The trusts of the term of 1,000 years were, shortly, that the trustees should apply the rents in aid of the testator's personal estate, first, in payment of his funeral and testamentary expenses, debts, legacies, and annuities given by his will, and next in discharge of the mortgage debts and incumbrances on his four estates, first, those on the Staffordshire estate, then those on the Leicestershire, Cheshire, and Lancashire estates, in that order. The testator directed the persons for the time being entitled to the rents of the four estates respectively, should keep down the interest payable in respect of the mortgage debts charged on the four estates until discharged. The testator gave a life interest to his wife in all the estates. She died on the 25th January, 1905, whereupon Estate Duty became payable in respect of the four estates.

The persons entitled to the rents of the Staffordshire and Leicestershire estates, and ultimately to moieties of the Lancashire estate, claimed that the Estate Duty paid primarily by the trustees of the term of 1,000 years on the Lancashire estate should be recouped proportionately by the other estates.

It was held (by Warrington, J., on 21st April, 1910) that the Estate Duty on the Lancashire estate was a charge on the *corpus* of that estate, and must be paid out of that estate without any recoupment against any other estates, and that the interest on the mortgage of that estate to pay the duty must be kept down out of the rents of that estate before their application under the terms of the testator's will.

It was held, also, that the persons entitled to the estates (other than the Lancashire estate) who had the benefit of the charge upon the rents of the Lancashire estate for the discharge of the incumbrances on the other estates, were not persons "entitled to any sum charged on such property (whether as capital, or as an annuity, or otherwise)" within sect. 14 (1) of the Finance Act, 1894.

They were entitled to beneficial interests in succession, and the owners of each of those estates would bear their proper part of the burden of the Estate Duty, by having the period to that extent postponed at which their incumbrances would be discharged, and the period during which they would have to keep down the interest on those incumbrances prolonged.

See also the cases noted at sect. 9 (1).

For a case where the charges were on Scotch estates, see *Colquhoun's Trustees* v. *Colquhoun's Trustees*, p. 137.

"**An express provision to the contrary.**"

These words received judicial interpretation in the case of *Re Parker-Jervis, Salt* v. *Locker* (see p. 232), also in *Re Lewis, Lewis* v. *Smith* (see under sect. 19 of the Finance Act, 1896, where the same words occur), and in the following cases:—

Re Maryon-Wilson, Wilson v. *Maryon-Wilson.*

A testator, by marriage settlement of 23rd July, 1895, on the marriage of his daughter, covenanted that his executor should, six months after his death, pay to the trustees of the marriage settlement 25,000*l.*, "without any deduction," to be held by them on the trusts of the settlement in favour of his daughter, her husband and issue. By his will he gave 25,000*l.* to such trustees in performance of his covenant.

Kekewich, J., held, (1) the Estate Duty payable on the death of the said testator, on 31st December, 1897, must be borne by his residuary estate, but (2) the Settlement Estate Duty must be paid out of the 25,000*l.*, and the trustees of the marriage settlement were liable therefor. The Court of Appeal (Lindley, M. R., Rigby and Williams, L. JJ.) reversed this decision as to (2), and held the trustees of the marriage settlement were entitled to receive the 25,000*l.* without deduction for the Settlement Estate Duty, which was therefore payable by the testator's executors out of his residuary estate.

Re Lord Fitzhardinge, Lord Fitzhardinge v. *Jenkinson.*

A testator, who died in October, 1857, by his will empowered any tenant for life to charge on the estates thereby settled a jointure not exceeding 3,000*l.* a year for his widow, "free from all taxes and deductions except property tax and Legacy or Succession Duty." This power was exercised by Lord F., who died in 1896.

The Court of Appeal (Lord Halsbury, Lindley, M. R., and

Rigby, L. J.) held this was an express provision to the contrary within sect. 14 (1), the testator's intention being clearly that the jointure should be free from all deductions, except those specified by him.

Michie's Executors v. *Michie.*

A testator bequeathed certain shares of his estate as mentioned in his will, and he directed the remaining shares should be devoted for certain purposes, and that the residue of this share should, "after discharging the necessary expenses connected with this trust," be apportioned among the beneficiaries mentioned in his will.

It was held by the First Division of the Court of Session in Scotland that this did not include Estate Duty.

Re Rayer, Rayer v. *Rayer.*

By his will, dated the 10th August, 1882, a testator devised a rent-charge of 250*l.* to his sister Frances Harmar for life, and after her decease a rent-charge of 100*l.* to each of her three children, and declared that the same should be payable "without any deduction except for legacy and income tax."

By the Customs and Inland Revenue Act, 1888, s. 21 (2), which came into force on the 16th May, 1888, Succession Duty was substituted for Legacy Duty on such rent-charges. By a codicil, made the 12th July, 1888, the testator confirmed his will, and he died in 1892.

Frances Harmar died in 1900, leaving the said three children.

On a summons taken out to ascertain who was liable to pay the death duties payable on F. Harmar's death,

Held that the effect of the confirmation by the codicil was to republish the will after the Act, and that the testator must be presumed to have known that there was then no Legacy Duty; it was therefore a case of *falsa demonstratio*, and the children were liable to pay the Succession Duty. The question of the Estate Duty was (Mr. Justice Farwell said) not seriously argued, and it was directed to be paid out of the residuary personal estate.

Re Pimm, Sharpe v. *Hodgson.*

A testator, J. M. Pimm, devised certain specific real estate to his daughter for life, with remainder to her children, and he made numerous bequests, and he devised and bequeathed his residuary real and personal estate to trustees to sell, "and

after payment, out of the net proceeds of sale, calling in and conversion, of my debts, funeral and testamentary expenses, and *duties*, and the incumbrances which may be charged on my said estate or any part thereof," to hold the proceeds as therein mentioned.

It was held, on 23rd June, 1904, by Mr. Justice Farwell, that the Estate Duty and Settlement Estate Duty, payable on the specifically devised real estate, must be borne by the residue because of the express provision.

In re Coxwell's Trusts, Kinloch-Cooke v. *Public Trustee.*

A testator, who had a special power of appointment in favour of his issue under his marriage settlement, by his will, made on the 30th November, 1883, appointed that from and after his death the trust funds should be held upon trust, that the settlement trustees "shall appropriate such portion of the said trust premises as shall at my death be of the clear amount or value of 4,500*l.* sterling, and retain the same to answer the trusts hereinafter declared for the benefit of my daughter, the said Mary Emma Cresswell."

He also appointed certain other portions "of the like amount or value" for other objects of the power, and that the residue of the fund should be appropriated and retained upon trust for another object.

The testator died on the 31st July, 1906, without having confirmed said will by any codicil.

Held (by Joyce, J.) that the words "of the clear amount or value," and "of the like amount or value," exempted from Estate Duty the portions of the fund in respect of which those words were used, and that such duty must be borne by the residue of the fund.

Kekewich v. *Kekewich and others.*

By a marriage settlement of the 2nd May, 1849, Trehawke Kekewich charged certain real estate with the sum of 10,000*l.* for portions of his children (other than an eldest son), to be raised on his death.

By another settlement of the same date the intended wife, Charlotte Peard, settled certain funds after death of said Trehawke Kekewich in favour of said younger children.

The wife Charlotte died 21st March, 1879. On the 18th October, 1881, Trehawke Kekewich settled certain bonds and shares in trust for himself for life, with remainder for the said

younger children, and after providing any sums advanced should be brought into hotchpot, he covenanted that he would in his lifetime, or his executors or administrators would on his death, pay to the trustees such a sum as with the funds provided by the two settlements of 1849 and this settlement would make up the portion of each of his younger children to 6,000*l.*, the surplus funds (if any), after providing each child with a portion of "*cash value of* 6,000*l.*," to go to said settlor, Trehawke Kekewich.

Trehawke Kekewich paid 6,000*l.* each to two of his sons in his lifetime in satisfaction of their portions, and this left five younger children entitled to portions.

Trehawke Kekewich died on the 22nd April, 1909, when the funds under said three settlements available to satisfy the said five portions were 10,000*l.*, 4,460*l.*, and 20,803*l.* respectively.

The settlor, Trehawke Kekewich, bequeathed his residuary estate to his eldest son, Trehawke Herbert Kekewich.

This summons was taken out to ascertain whether the said five sums were to bear any portion of the Estate Duty thereon, or whether they were "clear sums" of 6,000*l.* each, and whether said sums should bear any of the costs incidental to the winding-up of the trusts of said three settlements.

It was held (by Joyce, J., on 14th December, 1909) that the case was clearly governed by sect. 8, sub-sect. 4, and sect. 14, sub-sect. 1, of the Finance Act, 1894. There was no contract to pay the beneficiaries a "*clear*" sum. The duties and costs were, therefore, to be borne rateably.

Alexander's Trustees v. *Alexander's Trustees.*

A father bound himself in his son's marriage contract to pay the sum of 30,000*l.* to the marriage contract trustees, to be held by them for certain purposes (provision being made for postponement of payment during the father's lifetime so long as the father paid the son or the trustees 1,000*l.* per annum). In order to secure the payment of the sum the father executed a bond and disposition of his estate of Ballochmyle in favour of the marriage contract trustees. By his will the father devised the whole of his property to his testamentary trustees, who after his death paid the Estate Duty on the value of his estate, including the estate of Ballochmyle, without deducting the 30,000*l.* It was decided in *Lord Advocate* v. *Alexander's Trustees* (see p. 147) that the 30,000*l.* could not be deducted against the value for Estate Duty purposes. The sum of

30,000*l.* had not been paid at the father's death to the marriage contract trustees, but by the terms of the contract was then payable to them.

A question arose between the testamentary trustees of the father and the marriage contract trustees of the son with regard to the Estate Duty paid on the estate of Ballochmyle.

The testamentary trustees contended they were entitled to recover from the marriage contract trustees, under sect. 14 (1) of the Finance Act, 1894, a proportionate part of the Estate Duty attributable to the sum of 30,000*l.*

The marriage contract trustees contended that the relationship between the father and themselves was that of debtor and creditor, and that sect. 14 had no application. (See *In re Trenchard*, p. 199.) In any event, the clause of absolute warrandice (a Scotch term for a clause in a deed by which the grantor binds himself to make good to the grantee the right conveyed) in the marriage contract was an "express provision to the contrary." It was not necessary that the "provision" should refer in express terms to Estate Duty if it were wide enough to cover all deductions. (See *In re Parker-Jervis*, p. 232.)

It was held (in Scotland) that the marriage contract trustees were persons entitled to a "sum charged on" the estate of Ballochmyle within the meaning of sect. 14 (1) of the Finance Act, 1894, under a disposition which did not contain any express provision to the effect that the 30,000*l.* should be free of duty, the testamentary trustees were therefore entitled to recover from the marriage contract trustees a proper rateable part of the Estate Duty paid in respect of Ballochmyle.

Lord Low (in the course of his judgment) said the case of *Gray* v. *Gray* (see p. 149) had no bearing on this case, because in *Gray* v. *Gray* the covenanted sum was not charged on any particular property.

Re Dixon-Hartland, Banks v. *Hartland.*

A father, in his daughter's marriage settlement, covenanted with the trustees for the payment to them after his death of a sum of money with interest meantime from the date of the marriage by equal quarterly payments, the said sum and the interest meantime to be held in trust for the daughter for life, and then on the trusts set out in the settlement. The father charged certain real estate specified in the settlement with the payment thereof, subject to a proviso that the trustees should

not be bound to resort to the real estate to compel payment of the sum, but no legal mortgage of the real estate was executed. The father died on the 15th November, 1909, having by his will given his residuary real and personal estate to his executors upon trust for sale and conversion, and payment of his debts. His personal estate was sufficient to pay his debts, including the sum covenanted to be paid to the settlement trustees, who had no desire to resort to the real estate comprised in the settlement for payment of that sum. The settlement trustees took out an originating summons to determine the question whether they were liable to pay the Estate Duty in respect of the covenanted sum.

It was contended on behalf of the settlement trustees that the proviso that the trustees should not be bound to resort to the real estate was "an express provision to the contrary."

It was held (by Swinfen Eady, J., on 23rd February, 1911), following *Alexander's Trustees* v. *Alexander's Trustees*, that the trustees of the settlement were bound to pay the proper rateable part of the Estate Duty in respect of the property comprised in their security.

Re Marquis of Bath's Settlement, Thynne v. *Stewart.*

By a marriage settlement, dated the 19th August, 1861, A., in exercise of a power of appointment therein referred to, appointed, in the event of the marriage taking effect, certain estates to trustees for a term of 600 years from his death upon trust (in the events which happened), to raise in manner therein mentioned for the portion or portions of any children of the marriage (other than an eldest or only son) the sum of 20,000*l.*, to be divided between them in such proportions as he should by deed or will appoint. There was issue of the marriage five children, of whom three were daughters. By his will, dated the 2nd December, 1895, A. (after appointing executors and trustees) (*inter alia*) bequeathed a sum of 3,000*l.* "free of Estate Duty," an annuity of 100*l.* "free of Legacy and Estate Duties," and a sum of 900*l.* "free of Legacy and Estate Duties." By clause 7, after reciting the power of appointing portions contained in his marriage settlement, he appointed a sum of 20,000*l.* so raisable for portions to his three daughters in equal shares. By clause 8 he bequeathed certain moneys and securities to his trustees upon trust for sale and conversion, and continued as follows: "I direct my trustees or trustee out of my ready money and out of the moneys to arise from such

sale, calling in and conversion as aforesaid, to pay and provide for my funeral and testamentary expenses (including Estate Duty on everything passing under this my will), and debts (other than those mentioned in par. 6 hereof), and the annuity and pecuniary legacies hereinbefore bequeathed, and the Legacy Duty on such legacies as are bequeathed free of duty, and to stand possessed of the residue of the said money" upon trust for investment as therein mentioned. The plaintiff, one of the three daughters of the testator, took out this summons for the determination (*inter alia*) of the question whether the duty payable on one-third of the portions fund was payable out of property disposed of under clause 8 of the will.

Held (by Joyce, J., on 23rd April, 1914) that the only subject-matter to which the direction to pay Estate Duty could apply was the portions fund and certain subsequently devised real estate; that upon the question of construction whether the appointed portions passed under the will, the daughters clearly took "by virtue of" the will and the shares passed under the will; and that the Estate Duty payable upon the one-third belonging to the plaintiff was payable out of the property disposed of under clause 8 of the will.

In re Grant, Nevinson v. *United Kingdom Temperance Institution.*

The deceased had an absolute power of appointment by deed or will over certain funds, and exercised such power by deed by appointing "the net sum of" ——*l.* "clear of all costs and expenses of raising the same" to each of several persons, and the residue to one of such persons. Estate Duty was payable upon the deceased's death in respect of the funds, and the question was whether, under the terms of the appointment, the duty attributable to the "net" sums appointed was payable thereout or out of the residue.

Sargant, J., held (on 11th February, 1915) that the duty in respect of those sums was payable out of the residue of the funds, and that the words "clear of all costs, &c.," had not the effect of cutting down the meaning of the word "net."

A direction to pay "expenses incident to the trust" was held to include death duties in *Re Briscoe, Royds* v. *Briscoe.*

A direction in the will of a testator made before the 2nd August, 1894, to pay "Probate Duty" out of a certain fund will not be construed to mean "Estate Duty" if the testator

dies on or after the 2nd August, 1894; such direction is merely inoperative. (See *Re Boxer, Morris* v. *Woore.*)

A covenant by the deceased in the marriage settlement of his son to make the settled funds at the covenantor's death "up to 30,000*l.*" was held not to be an express provision to the contrary for the purpose of Settlement Estate Duty. (See *Dundas's Trustees* v. *Dundas's Trustees.*)

A direction in a will to pay "all death duties" does not include Estate Duty, Settlement Estate Duty, and Succession Duty in respect of a sum covenanted to be paid by the deceased and raisable out of his real estate. See

Re Briggs, Richardson v. *Bantoft.*

This was an originating summons taken out by the tenant for life under the will made in 1908 of a testator, who died in 1913, to have it determined whether the direction in the testator's will to pay "*all death duties*" out of the residuary estate included certain Estate Duty, Settlement Estate Duty, and Succession Duty which had become payable on a sum of 15,000*l.* This sum of 15,000*l.* the testator by deed, made in 1884, covenanted to pay to trustees during his life or six months after his death, in consideration of the marriage of his daughter, the defendant R., the payment thereof being secured by a deed of even date on certain freehold hereditaments situate at T. belonging to the testator. The testator did not pay the sum of 15,000*l.* during his life. On the death of the testator the question arose whether the duties payable on the 15,000*l.* with which the freehold property at T. was chargeable were payable by the trustees of the will, under the direction in the will to pay "*all death duties*" out of the residuary estate, or by the trustees of the settlement made by the testator in 1884. It was contended on behalf of persons interested under the settlement made in 1884, that sect. 14, sub-sect. 1, of the Finance Act, 1894, did not apply, as the property in question liable to this duty was not property which did not pass to the executors as such within sect. 14, sub-sect 1. On behalf of those interested in the residuary estate of the testator, it was argued that sect. 14, sub-sect. 1, applied, and that the direction in the will to pay all death duties out of residue was not sufficient to override the statutory liability of the trustees of the settlement.

Held (by Astbury, J., on 2nd July, 1914) that Estate Duty was not payable out of residue, but by the trustees of the settlement of 1884, under sect. 14, sub-sect. 1, of the Finance

Act, 1894, the settlement not containing any proviso to the contrary (*Re Hartland, Banks* v. *Hartland*, 104 L. T. R. 490; [1911] 1 Ch. 459); that on the true construction of the clause in the will the testator directed all death duties in fact payable by the trustees of his will to be borne by his residue, but Settlement Estate Duty * and Succession Duty were not payable by the trustees of the will, being primarily payable by the trustees of the settlement of 1884, and did not therefore come under the direction of the trustees of the will to pay all death duties out of residue.

(2) Any dispute as to the proportion of Estate Duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a County Court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

"**Any dispute.**"—This refers to disputes between the parties themselves, and not between the parties and the Commissioners.

"**Rules of Court.**"—The Rules are dated 26th November, 1895. St. R. & O., 1895, No. 603 (L. 35).

(3) Any person from whom a rateable part of Estate Duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

A person who is entitled to a charge only on the property will, therefore, not be entitled to question the correctness of the value of the property arrived at between the Commissioners and the accountable person.

15.—(1) Estate Duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds

* As the settlement was made before the 2nd August, 1894, it does not appear that Settlement Estate Duty was payable in respect of this 15,000*l.*

purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

The effect of this sub-section is that only the first annuity under 25*l.* is exempt; therefore, if the deceased provided three annuities, firstly, 10*l.*; secondly, 11*l.*; and thirdly, 4*l.*, the 10*l.* annuity only is exempt.

Again, if the first annuity is for 26*l.*, the second for 12*l.*, the latter only is exempt.

If the deceased, A., provided in concert or arrangement with another a 40*l.* annuity for the joint lives of A. and B. and the life of the survivor, then, on the death of A., the moiety of the 40*l.* is liable to Estate Duty because the 20*l.* is not a single annuity, but half of the 40*l.* annuity.

It must be remembered that if A. and B., being about the same age, purchase in equal shares an annuity for their joint lives and the life of the survivor, in practice no claim for Estate Duty or Succession Duty is made on the death of the first to die, the survivor being considered to have purchased the benefit accruing to him on such death.

The annuity that escapes the payment of Estate Duty by the force of this sub-section is in practice not considered to be thereby chargeable with the 1 per cent. Succession Duty that might have been payable if the Finance Act had not been in force.

Example:—

A. purchased an annuity of 25*l.*, made payable to A. for life, and then to his son B. for life. On the death of A. this annuity escapes the payment of Estate Duty and the 1 per cent. or 1½ per cent. Succession Duty that would, before the 2nd August, 1894, have been payable.

(2) It shall be lawful for the Treasury to remit the Estate Duty, or any other duty leviable on or with reference to death, in respect of any such pictures,

prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate Duty.

Further powers of remitting death duties are given to the Treasury by sect. 20 of the Finance Act, 1896, and sect. 63 of the Finance (1909–10) Act, 1910.

Application for remission should be made to the Secretary of the Treasury, accompanied by a schedule and valuation of the articles.

"**It shall be lawful for the Treasury to remit.**"—The Treasury are not bound to remit, and there is no appeal from their decision.

"**Other duty.**"—This will cover Succession, Legacy, or Account Duty. Legacies of specific articles bequeathed to any body corporate whether aggregate or sole, or to the Society of Serjeants' Inn, or any of the Inns of the Court of Chancery, or any endowed school in order to be kept by such body corporate, society, or school, and not for the purposes of sale, are exempt from Legacy Duty by virtue of the Schedule, Part III., 55 Geo. 3, c. 184, and are also exempt from Succession Duty by sect. 18 of the Succession Duty Act, 1853.

"**Pictures, prints, books, manuscripts, works of art, or scientific collections.**"

Particulars of the bequests (with the total value thereof) on which death duties have been remitted under this section are given in the annual reports of the Commissioners of Inland Revenue.

They consist chiefly of pictures, drawings, engravings, books, manuscripts, maps, charts, photographs, collections of moths, butterflies, stuffed birds, marbles, china, pottery, stained and painted glass, enamels, minerals, fossils, furniture, microscopic specimens, shells, &c.

If the duty is remitted, the property is not to be aggregated.

(3) Estate Duty shall not be payable in respect of any pension or annuity payable by the Government

of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

The following are examples of funds which appear to escape Estate Duty:—Bengal Military Fund, Bombay Military Fund, Madras Military Fund, Bengal Military Orphan Society, Indian Military Service Family Pensions, Madras Medical Fund, Indian Navy Fund, Bengal Civil Fund, Bombay Civil Fund, Madras Civil Fund, Indian Civil Service Family Pensions, India Office Provident Fund, Regular Widows' Fund, Elders' Widows' Fund, Bengal Uncovenanted Service Family Pension Fund, Bombay Uncovenanted Service Family Pension Fund.

The sub-section is deemed to apply to annuities and pensions payable by a Provincial Government in India in consequence of members' contributions made voluntarily.

(4) Estate Duty shall not be payable in respect of any advowson or church patronage which would have been free from Succession Duty under sect. 24 of the Succession Duty Act, 1853.

Sect. 24 of the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), is as follows:—

24. A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal.

It will be observed that only such advowsons and church patronage as are exempted from Succession Duty *under sect.* 24 of the Succession Duty Act, 1853, are benefited, therefore a gift by will of a next presentation, which is personal estate and liable to Legacy Duty (under 45 Geo. 3, c. 28, s. 4), is chargeable with Estate Duty.

If the advowson is given by the will on *trust for sale*, there is no successor under sect. 24 of the Succession Duty Act, 1853, therefore the exemption in this sub-section cannot apply to such a case.

By the Benefices Act, 1898 (61 & 62 Vict. c. 48), the owner

of an advowson cannot sell anything less than his whole interest therein.

In the following case it was held advowsons were not liable to Estate Duty at any time.

Att.-Gen. v. *Peek and others.*

By his will, dated 13th May, 1898, Sir Henry Peek devised (*inter alia*) lands and hereditaments in the county of Devon, with the advowsons of Rousdon, Drewsteignton, Cranleigh, and St. Magnus, London Bridge, E.C., to his son, Cuthbert Peek, for life, remainder to his (testator's) grandson, Wilfrid Peek, for life, remainder to Wilfrid Peek's first and every other son in order of seniority in tail male. Sir Henry Peek died 26th August, 1898, and Estate Duty was paid on his death on the principal value of his property (except the advowsons), valued at 415,200*l.*, at 7 per cent., and Settlement Estate Duty at 1 per cent. was paid on the settled real estate (except the advowsons). Sir Cuthbert Peek died on the 6th July, 1901, and Estate Duty was paid at 7 per cent. on 251,977*l.* 1*s.*, being the value of his property. No duty was paid on the advowsons. On the 8th March, 1909, and 6th August, 1909, respectively, Sir Wilfrid Peek, as tenant for life, in exercise of the power in the Settled Land Acts, 1882 to 1890, sold and conveyed the advowsons of Drewsteignton and Cranleigh for the sums of 1,840*l.* 10*s.* and 1,450*l.* paid to the trustees of Sir Henry Peek's will. In the circumstances the Commissioners of Inland Revenue claimed Estate Duty at 7 per cent. and Settlement Estate Duty at 1 per cent. on the said sums as payable on the death of Sir H. Peek, or, alternatively, on the death of Sir Cuthbert Peek.

It was held (by Hamilton, J., on 22nd February, 1912) that sect. 15 of the Finance Act, 1894, was clearly an exempting section, that sub-sect. 4 therefore exempted the advowsons and proceeds of sale thereof from Estate Duty and Settlement Estate Duty, and that the Finance Act failed to provide machinery for charging Estate Duty when advowsons were sold.

The Court of Appeal (Cozens-Hardy, M. R., Buckley and Kennedy, L. JJ.), on 17th April, 1913, affirmed the decision of Hamilton, J., and held that no duties were payable upon the proceeds of sale of the advowsons, either as on the death of Sir H. Peek or of Sir Cuthbert Peek.

There was no appeal to the House of Lords, therefore any advowson that would have been free from Succession Duty

under sect. 24 of the Succession Duty Act, 1853, will be free from Estate Duty even if sold.

16.—(1) The provisions of sects. 33, 35, and 36 of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed 300*l.*), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed 500*l.*, and where the gross value does not exceed 300*l.* the fixed duty shall be thirty shillings, and where the gross value exceeds 300*l.* and does not exceed 500*l.* the fixed duty shall be fifty shillings.

(2) All such property may be comprised in the notice under the said sect. 33.

Sects. 33, 35, and 36 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), are as follows:—

33.—(1) Where the whole personal estate and effects of any person dying on or after the first day of June, 1881 (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts and funeral expenses, shall not exceed the value of 300*l.*, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the Court, or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of Court and expenses, and, also, in case the estate and effects shall exceed the value of 100*l.*, the further sum of thirty shillings for Stamp Duty.

(2) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of 300*l.*, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3) The principal Registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of

forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

(4) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the President or Judge of the Division.

(5) When the estate and effects shall exceed the value of 100*l.*, the Stamp Duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.

35. When representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding 300*l.*, then a sum equal to the Stamp Duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to Legacy Duty or Succession Duty in respect of the estate or effects to which such affidavit or inventory relates.

Under sects. 33, 35, and 36 of the Customs and Inland Revenue Act, 1881, if the whole of the deceased's personal estate in the United Kingdom and abroad, including personal property over which the deceased had and exercised an absolute power of appointment, was under 300*l.* without deducting debts or funeral expenses, a fixed duty of 30*s.* could be paid (with 15*s.* for the Court fees), or if the gross estate did not exceed 100*l.*, no Probate Duty was payable, and in either case no further Legacy or Succession Duty was payable.

These provisions are incorporated into the Finance Act, so as to extend to Estate Duty, but with this rather important modification, that the gross value is not the gross value of the deceased's free personal estate, but of all the property in respect of which Estate Duty is payable, "exclusive of property settled otherwise than by the will of the deceased."

Agricultural property is, for the purposes of sect. 16, still to be valued in accordance with the proviso to sect. 7 (5) of the Finance Act, 1894, notwithstanding sect. 60 (1) of the 1910 Act. (See sect. 61 (1) of the latter Act.)

"**The gross value.**"—Strictly, no debts or mortgages should be deducted, but ancestral mortgages are allowed (in practice) to be deducted before fixing the gross value.

By sect. 61 (2) of the 1910 Act, mortgages or charges created

for the purpose of paying the purchase-money of the property may be deducted before ascertaining the gross value for the purpose of this sub-section.

If the deceased died domiciled in the United Kingdom, his moveable (but not immoveable) property abroad must be included, but if he died domiciled abroad, neither his immoveable nor moveable property abroad need be included, because only property in respect of which Estate Duty is *payable* is to be taken into account. (See notes at sect. 2 (2).)

"**Exclusive of property settled otherwise than by the will of the deceased.**"—The only property liable to Estate Duty, excluded from the gross, is settled property (except that settled by the will of the deceased), consequently, if the deceased had, by his marriage settlement, settled property on himself for life, remainder to his children, this would be excluded.

Property over which the deceased had an absolute power of appointment.—If A. settled by deed 500*l.* on B. for life, and then as B. should absolutely by will appoint, in default, to someone other than B., his executors or administrators, then on the death of B., having by will exercised his absolute power, having regard to the fact that the original settlement created by the deed was at an end (see the Court of Appeal's decision in *Re Gordon and Adams' Contract*, [1914] 1 Ch. 110), it is considered such property is not "settled otherwise than by the will" of B., and should be treated as part of his free estate and included in the gross for the purpose of this section. If, however, the deceased has shown an intention *not* to defeat the interests of the persons entitled under the old disposition in default of the exercise of the power, it is considered that such property may be treated as "settled otherwise than by the will" of the deceased if to the advantage of the taxpayer to do so.

But if, in the above example, the property had been settled, in default of B. exercising his absolute power of appointment, on B. absolutely, then on B.'s death the 500*l.* is, with less doubt, deemed part of B.'s free unsettled personal estate (the power being merely superabundant) and should be included in the gross for the purposes of this section. (See *Re Magan*, p. 95.)

A great many cases occur in practice in which it is difficult to say whether the property is settled otherwise than by deceased's will or not.

The following examples may be taken to be clearly *not settled* at all, and therefore should be included to ascertain the *gross*:—

(1) Donations *mortis causâ*.

(2) Absolute gifts *inter vivos* within three years of death.

(3) Policies on deceased's life kept up by him for an absolute donee.

(4) Gifts with a reservation may be regarded as "*not settled*." For instance: If the deceased had, some years before his death, given a house to his son, the son agreeing to allow the deceased to reside rent free for his life, the value of the house should be aggregated with the deceased's free estate, although the latter is under 1,000*l*. in value.

The following may be regarded as "settled" otherwise than by the will of the deceased:—

(1) An annuity purchased by the deceased for the joint lives of himself and his wife and for the survivor for life, the wife being the survivor.

(2) An investment made in the joint names of himself and his wife or child, with an express or implied trust that the income should be received by the deceased for life, and that the survivor should take the capital.

(3) Property in which the deceased had an estate by the curtesy or dower, under the intestacy of a person dying before or after the 2nd August, 1894. (See sect. 22 (3) of the Finance Act, 1894.)

Property may be so circumstanced that it is very doubtful whether it can strictly be said to be "settled otherwise than by the will of the deceased" or not. The following are examples:—

(1) Property which the deceased held as a joint tenant legally and equitably with another.

(2) Property which the deceased held as a joint investment with another.

(3) Real property of which the deceased was tenant in tail.

(4) A reversionary interest to which the deceased was entitled under a settlement.

(5) Property over which the deceased had and exercised an absolute power of appointment (the remainder over in default being to other than the deceased), but only subject to the conditions set out on p. 257.

In each of the above five examples it is considered that the

view most favourable to the taxpayer may be adopted. But whichever view ("settled," or "not settled") is adopted, it must be followed consistently with all the consequences.

Example:—

Deceased left free personal estate, gross 290*l.*, net 250*l.*, and was also joint tenant with his brother of Blackacre, valued at 800*l.*, purchased by them equally—one-half liable to Estate Duty = 400*l.*

(1) The joint tenancy property may be treated as "settled" and excluded from aggregation with the free estate, then the 290*l.* will be charged with the 30*s.* fixed Stamp Duty.

The moiety of Blackacre, 400*l.*, will be liable to Estate Duty at 1 per cent. = 4*l.*, but this moiety is not entitled to the exemption from Succession Duty contained in sect. 16 (3), therefore Succession Duty is payable as follows:—400*l.* less 4*l.* Estate Duty = 396*l.*, at 5 per cent. = 19*l.* 16*s.* The total duties, adopting the view that the joint tenancy property is "settled otherwise than by the will of the deceased," are, therefore, 30*s.*, 4*l.*, and 19*l.* 16*s.* = 25*l.* 6*s.*

(2) If the joint tenancy property is treated as not "settled otherwise, &c." then the 400*l.* must be aggregated with the 550*l.* = 650*l.*, and the whole estate will be charged Estate Duty at 2 per cent. = 13*l.*

In this case the exemption from Succession Duty in sect. 16 (3) applies to the whole non-settled estate.

It will be seen that, in the above example, it is to the advantage of the taxpayer to adopt the latter view.

Examples can, of course, be easily composed where it is to the taxpayer's advantage to treat the joint tenancy property on the first method.

There are certain payments made under the rules of numerous provident and benevolent societies which cannot be said to be *settled*, but in which the deceased had no interest, and could have had no interest under any circumstances; and these are, by virtue of sect. 4 of the Finance Act, 1894, and sect. 12 (1) of the Finance Act, 1900, not aggregable with any other property *for determining the rate of Estate Duty*, and, therefore, are not aggregable with the deceased's (sect. 16) estate for such purpose, but they must be aggregated for the purpose of determining the *gross value* under sub-sect. 1, or *net value* under sub-sect. 3 of sect. 16.

Examples:—

(1) Free estate ..... 76*l.* gross
Money nominated under a policy in which the deceased had and could have had no interest ..... 390*l.*

466*l.*

The whole 466*l.* may be included in the Inland Revenue affidavit on obtaining the grant to the deceased's estate, and the fixed duty of 50*s.* be paid.

(2) Free estate ..... 490*l.* gross
Nominated policy as at (1) ..... 2,600*l.*

All the non-settled property exceeds 1,000*l.*, therefore the 50*s.* fixed duty cannot be paid on the free estate. Since it is conceded that the deceased never had an interest in the policy moneys, those moneys could not be aggregated with the free estate, so as to increase the *rate* on the free estate, or the moneys themselves, consequently the free estate pays Estate Duty at 1 per cent., and also Legacy, Succession, and Settlement Estate Duties if chargeable by reason of the will. The policy moneys pay Estate Duty at 3 per cent., and Succession Duty if chargeable.

These examples only apply if the policy moneys are "not settled."

In example (2), if any other fully aggregable property passed on the deceased's death, it would, of course, fall to be aggregated with the net amount of the free estate, since such is outside sect. 16.

The payment of the fixed duty of 30*s.* or 50*s.* is, by virtue of sect. 36 of the Customs and Inland Revenue Act, 1881, to be in full satisfaction of any claim for Legacy or Succession Duty *in respect of the estate or effects to which the affidavit or inventory relates.* Observe the difference in sub-sect. 3 of sect. 16.

Where, through a mistaken belief as to the true amount of the estate, the executor or administrator has omitted to avail himself of the provisions of this sub-section, and has paid *ad valorem* duty instead of the fixed duty, if he applies within a reasonable time and asks to be allowed to have returned to him the amount paid in excess of the fixed duty, an adjustment is usually granted.

Having regard to sect. 35 of the Customs and Inland Revenue Act, 1881, if the fixed duty of 30*s.* or 50*s.* had been paid and it

afterwards turned out that *ad valorem* Estate Duty should have been paid, the fixed duty could not be allowed, but this was altered by the Revenue Act, 1903 (3 Edw. 7, c. 46, s. 14). (See p. 363.)

(3) Where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed 1,000*l.*, such property, for the purpose of Estate Duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or Estate Duty has been paid upon the principal value of that estate, the Settlement Estate Duty and the Legacy and Succession Duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

"**Net value**"—viz., after the due allowances have been made under sect. 7 (1) and (5).

"**Exclusive of property settled.**"—See notes under sect. 16 (1).

"**Does not exceed 1,000*l.***"—Where the death took place on or after 1st July, 1896, and before the 9th April, 1900, and the net estate exceeds 1,000*l.*, but is under 1,100*l.*, the fraction of the 100*l.* over the 1,000*l.* may be excluded, by virtue of sect. 17 of the Finance Act, 1896, so as to bring the estate within this sect. 16 (3).

"**Settlement Estate Duty and the Legacy and Succession Duties shall not be payable under the will or intestacy of the deceased in respect of that estate.**"—These words differ from sect. 36 of the Customs and Inland Revenue Act, 1881, the exemption being confined to the Settlement Estate Duty and Legacy and Succession Duties *under the will or intestacy of the deceased*; it would, therefore, seem to follow that, strictly, Legacy and Succession Duties might be payable in respect of property if such duties do not arise under the will or intestacy of the deceased. For example, Succession Duty might be considered payable where, say, the deceased's severable share of joint tenancy property accrues to his surviving brother, but in practice this Succession Duty is not claimed if the succession

is derived from the deceased, and if the moiety of the property held in joint tenancy and the deceased's free estate are together under 1,000*l.* in value.

Where a testator, whose estate is within the provisions of sect. 16 (1) or sect. 16 (3) of the Finance Act, 1894, viz., sub 500*l.* gross or 1,000*l.* net respectively, devises real estate to persons as joint tenants, on the death of one of the joint tenants without severing the joint tenancy, Estate Duty will be payable, because the deceased joint tenant had been "competent to dispose," and although such property may be considered as "settled" (see p. 258), on the joint tenant's death it will be aggregable with the joint tenant's own free estate if such estate is over 1,000*l.* in value, and may, therefore, be liable to a 3 per cent. or higher rate of Estate Duty. Notwithstanding this, Succession Duty will not be payable, because the original testator is the predecessor (see Succession Duty Act, 1853, s. 3), and the exemptions in sect. 16 (1) and (3) will apply.

Where the deceased's net estate does not exceed 1,000*l.* and such estate includes a reversion in settled property which is liable to be defeated by the exercise of an overriding power of appointment, the exemptions from Settlement Estate Duty, Legacy Duty, and Succession Duty conferred by this sub-section apply to such reversion, notwithstanding it is included in the Inland Revenue affidavit as being of no value. (See the example given on pp. 163 and 164.)

These exemptions are not affected by the reimposition of the 1 per cent. Legacy and Succession Duties imposed by sect. 58 (2) of the 1910 Act.

The Post Office Savings Bank Regulations, 1910, 88 (1), and The Trustee Savings Bank Regulations, 1900, 26 (1), provide:—

> If the total property of any deceased depositor exceeds 100*l.*, after deduction of debts and funeral expenses, any sum which may, under these regulations, be paid to a survivor in the account (not being a trustee), whose name has been added to the account, at the request of such deceased depositor, or otherwise than to the legal personal representative of the depositor, shall, notwithstanding such payment, be for the purposes of Estate Duty treated as passing under the will or intestacy of the deceased depositor.

Where the sum referred to in the regulations above does not exceed 500*l.*, and the deceased depositor leaves no free property, it is customary to allow an adapted affidavit (Form B 2) to be stamped with the fixed duty of 30*s.* or 50*s.*, as the case may be,

and to make no claim for Succession Duty, although in strictness the provisions of sect. 36 of the Customs and Inland Revenue Act, 1881, are not applicable. Likewise, where the net value of the deceased's free estate, inclusive of the sum referred to in the regulations quoted above, does not exceed 1,000*l.*, the exemption in sect. 16 (3) from Succession Duty is regarded as applicable to such sum.

(4) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the Court thereto on the same being sent to him for that purpose, with the fee of 2*s.* 6*d.*

The Probate having been obtained in England may be resealed in Ireland by sending the same, with 2*s.* 6*d.*, to the Principal Probate Registrar, Dublin, but it must be accompanied with the usual resealing certificate, which can be obtained from the Estate Duty Office, Somerset House, London. The same procedure applies if the Probate obtained in Ireland is required to be resealed in England, but in this case the resealing certificate will be obtained from the Estate Duty Office, Dublin.

See Rules of the Supreme Court England, St. R. & O., 1904, pp. 768–774.

(5) Where the fixed duty of 30*s.* or 50*s.* is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

This is not affected by sect. 18 of the Finance Act, 1896, provided the duty is paid within twelve months of the death, but if it is not so paid, then interest is payable at 3 per cent. as from the death.

Rates of Estate Duty.

17. The rates of Estate Duty shall be according to the following scale :—

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and	does	not	exceed 500	One pound.
,,	500	,,	,,		1,000	Two pounds.
,,	1,000	,,	,,		10,000	Three pounds.
,,	10,000	,,	,,		25,000	Four pounds.
,,	25,000	,,	,,		50,000	Four pounds ten shillings.
,,	50,000	,,	,,		75,000	Five pounds.
,,	75,000	,,	,,		100,000	Five pounds ten shillings.
,,	100,000	,,	,,		150,000	Six pounds.
,,	150,000	,,	,,		250,000	Six pounds ten shillings.
,,	250,000	,,	,,		500,000	Seven pounds.
,,	500,000	,,	,,		1,000,000	Seven pounds ten shillings.
,,	1,000,000	-	-	-	- -	Eight pounds.

The rate of the Settlement Estate Duty where the property is settled shall be 1 per cent.

(Increased to 2 per cent. in the case of persons dying on or after the 30th April, 1909, by sect. 54 of the 1910 Act; but the duty is not to be levied in the case of persons dying after the 11th May, 1914. See sect. 14 of the Finance Act, 1914.)

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate Duty and the Settlement Estate Duty shall be payable at the rate per cent. for the full sum of ten pounds.

In the case of settled property passing on a death after the 8th April, 1900, and prior to the 19th April, 1907, where the disponer died on or before the 1st August, 1894, and such property, if he had died after that date, would have been chargeable with Estate Duty on his death, the amended law as to aggregation, stated on p. 91, may result in the rates of duty on the settled property, treated as an "estate by itself," and on property aggregable therewith, being raised $\frac{1}{2}$ per cent., except in the case of the 8 per cent. rate.

In the case of persons dying on or after the 19th April, 1907, and before the 30th April, 1909, the rates of Estate Duty are according to the following scale. (See Finance Act, 1907, s. 12, and the First Schedule to that Act.) The higher rates do not affect purchasers or mortgagees of property sold or mortgaged before the 19th April, 1907.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and	does	not	exceed 500	One pound.
„	500	„	„		1,000	Two pounds.
„	1,000	„	„		10,000	Three pounds.
„	10,000	„	„		25,000	Four pounds.
„	25,000	„	„		50,000	Four pounds ten shillings.
„	50,000	„	„		75,000	Five pounds.
„	75,000	„	„		100,000	Five pounds ten shillings.
„	100,000	„	„		150,000	Six pounds.
„	150,000	„	„		250,000	Seven pounds.
„	250,000	„	„		500,000	Eight pounds.
„	500,000	„	„		750,000	Nine pounds.
„	750,000	„	„		1,000,000	Ten pounds.
„	1,000,000	„	„		1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
„	1,500,000	„	„		2,000,000	Ten pounds on one million, and twelve pounds on the remainder.
„	2,000,000	„	„		2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
„	2,500,000	„	„		3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
„	3,000,000	-	-	-	- - -	Ten pounds on one million, and fifteen pounds on the remainder.

In the case of persons dying on or after the 30th April, 1909, and before the 16th August, 1914, the rates of Estate Duty are according to the following scale. (See Finance (1909–10) Act, 1910, s. 54, and the Second Schedule to that Act.) The higher rates do not affect purchasers or mortgagees of property sold or mortgaged before the 30th April, 1909. (See sect. 64 of the 1910 Act.)

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and	does	not	exceed 500	One pound.
„	500	„	„		1,000	Two pounds.
„	1,000	„	„		5,000	Three pounds.
„	5,000	„	„		10,000	Four pounds.
„	10,000	„	„		20,000	Five pounds.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	20,000	and does not exceed		40,000	Six pounds.
,,	40,000	,,	,,	70,000	Seven pounds.
,,	70,000	,,	,,	100,000	Eight pounds.
,,	100,000	,,	,,	150,000	Nine pounds.
,,	150,000	,,	,,	200,000	Ten pounds.
,,	200,000	,,	,,	400,000	Eleven pounds.
,,	400,000	,,	,,	600,000	Twelve pounds.
,,	600,000	,,	,,	800,000	Thirteen pounds.
,,	800,000	,,	,,	1,000,000	Fourteen pounds.
,,	1,000,000	-	-	-	Fifteen pounds.

In the case of persons dying after the 15th August, 1914, and before the 31st July, 1919, the rates of Estate Duty are according to the following scale. (See Finance Act, 1914, s. 12, and the First Schedule to that Act.) The higher rates do not affect purchasers or mortgagees of property sold or mortgaged before the 11th May, 1914. (See sect. 16 of that Act.)

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	1
,,	500	,,	,,	1,000	2
,,	1,000	,,	,,	5,000	3
,,	5,000	,,	,,	10,000	4
,,	10,000	,,	,,	20,000	5
,,	20,000	,,	,,	40,000	6
,,	40,000	,,	,,	60,000	7
,,	60,000	,,	,,	80,000	8
,,	80,000	,,	,,	100,000	9
,,	100,000	,,	,,	150,000	10
,,	150,000	,,	,,	200,000	11
,,	200,000	,,	,,	250,000	12
,,	250,000	,,	,,	300,000	13
,,	300,000	,,	,,	350,000	14
,,	350,000	,,	,,	400,000	15
,,	400,000	,,	,,	500,000	16
,,	500,000	,,	,,	600,000	17
,,	600,000	,,	,,	800,000	18
,,	800,000	,,	,,	1,000,000	19
,,	1,000,000	-	-	-	20

In the case of persons dying on or after the 31st July, 1919, the rates of Estate Duty are according to the following scale.

(See Finance Act, 1919, s. 29, and the Third Schedule to that Act.) The higher rates do not affect purchasers or mortgagees of property sold or mortgaged before the 30th April, 1919. (See that section.)

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	1
„	500	„	„	1,000	2
„	1,000	„	„	5,000	3
„	5,000	„	„	10,000	4
„	10,000	„	„	15,000	5
„	15,000	„	„	20,000	6
„	20,000	„	„	25,000	7
„	25,000	„	„	30,000	8
„	30,000	„	„	40,000	9
„	40,000	„	„	50,000	10
„	50,000	„	„	60,000	11
„	60,000	„	„	70,000	12
„	70,000	„	„	90,000	13
„	90,000	„	„	110,000	14
„	110,000	„	„	130,000	15
„	130,000	„	„	150,000	16
„	150,000	„	„	175,000	17
„	175,000	„	„	200,000	18
„	200,000	„	„	225,000	19
„	225,000	„	„	250,000	20
„	250,000	„	„	300,000	21
„	300,000	„	„	350,000	22
„	350,000	„	„	400,000	23
„	400,000	„	„	450,000	24
„	450,000	„	„	500,000	25
„	500,000	„	„	600,000	26
„	600,000	„	„	800,000	27
„	800,000	„	„	1,000,000	28
„	1,000,000	„	„	1,250,000	30
„	1,250,000	„	„	1,500,000	32
„	1,500,000	„	„	2,000,000	35
„	2,000,000	-	-	-	40

The scale of Estate Duty in sect. 17 of the 1894 Act was repealed by sect. 30 (1) and schedule 3 of 7 Edw. 7, c. 13 (Finance Act, 1907), as to the deaths of persons dying on or after the 19th day of April, 1907, and by sect. 12 of that Act the scale set out in the First Schedule was substituted, with the usual proviso that a purchaser or mortgagee of property claiming under a sale or mortgage made before the 19th April, 1907, should not pay any higher duty than would have

been payable if sect. 12 of the Finance Act, 1907, had not passed.

The words in italics in sect. 17 of the 1894 Act were repealed by sect. 40 (and schedule, Part III.) of the Finance Act, 1896, in the case of persons dying on or after the 1st July, 1896, and sect. 17 of that Act substituted the following proviso:—

> Provided that where the principal value of an estate comprises a fraction of 100*l.* in excess of 100*l.*, or of any multiple of 100*l.*, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds 100*l.* and does not exceed 200*l.* the duty shall be 1*l.*

But this proviso was again repealed by sect. 18 (and Second Schedule) of the Finance Act, 1900, as regards persons dying on or after the 9th April, 1900, and it is provided by sect. 13 (1) of that Act as follows:—

> For the purpose of determining the rate and the amount of duty the exclusion, under sect. 17 of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the commencement of this Act cease to have effect.

The result is that in the case of persons dying on or after the 9th April, 1900, Estate Duty and Settlement Estate Duty are payable on the exact net value of the property chargeable.

The following examples will show the workings of these sections:—

1. *Death after* 1*st August,* 1894, *and before* 1*st July,* 1896.

(a) If the net estate was 4,632*l.* 8*s.* 4*d.*, then Estate Duty was payable on 4,640*l.*

(b) If real and personal estate are to be paid on in the one account, and the fraction of the 10*l.*, in each case added together exceed 10*l.*, then the fractions of the real estate and the personal estate should each be increased to the next multiple of 10*l.* For example, real estate is worth 1,656*l.*, and personal estate is worth 1,768*l.* The duty on the real estate should be calculated as on 1,660*l.*, and the duty on the personal estate on 1,770*l.* But if the two fractions do not together exceed 10*l.*, then the property which has the larger fraction should be increased to the next multiple of 10*l.*, and the fraction of the other property should be reduced to the next lower multiple of 10*l.* For example, real property worth 1,862*l.* and personal

property 1,786*l.* The real property should be calculated as 1,860*l.* and the personal property 1,790*l.* Settlement Estate Duty was treated in the same way. The Estate Duty is, of course, deducted from the principal value of the property before assessing the Settlement Estate Duty in the case of property which does not pass to the executor "as such."

2. *Death on or after* 1*st July*, 1896, *and before* 9*th April*, 1900.

(a) If the net estate is 10,089*l.* 5*s.* 4*d.*, the rate and amount of Estate Duty is calculated as on 10,000*l.*, and is, therefore, 3 per cent. on 10,000*l.* and not 4 per cent. on 10,089*l.* 5*s.* 4*d.*

(b) If real estate and personal estate are to be paid on the one account or affidavit, they are to be treated thus: If the two fractions of 100*l.* are together less than 100*l.*, each may be disregarded.

For example:—

Real estate 2,140*l.*, personal estate 3,558*l.*; duty should be calculated as on real estate 2,100*l.*, personal estate 3,500*l.*

But if together they amount to or exceed 100*l.*, the larger fraction should be increased to the next multiple of 100*l.* and the smaller fraction reduced to the next lower multiple of 100*l.*

For example:—

Real estate 5,260*l.*, personal estate 6,370*l.*; should be calculated as on real estate 5,200*l.* and personal estate 6,400*l.*

3. *Death on or after* 9*th April*, 1900.

Net estate is 1,926*l.* 10*s.* 6*d.*, Estate Duty is payable on 1,926*l.* 10*s.* 6*d.*

Settlement Estate Duty is likewise payable on the actual net sum settled after allowing a deduction of the Estate Duty. Thus, 10,200*l.* passes on a death in 1908; Estate Duty = 408*l.*, 10,000*l.* − 408*l.* = 9,792*l.*; Settlement Estate Duty is payable on 9,792*l.* at 1 per cent. = 97*l.* 18*s.* 4*d.*

Succession Duty.

18.—(1) The value for the purpose of Succession Duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this Act for Estate Duty on real property, with interest at the rate of 3 per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

"**Succession**" is defined by sect. 2 of the Succession Duty Act, 1853.

"**Real property**," by sect. 1 of the Succession Duty Act, 1853, includes:—

All freehold, copyhold, customary, leasehold, and other hereditaments and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland and all estates in any such hereditaments.

The cesser of an annuity, charged on real property, occurring after the 1st August, 1894, is not a "succession to real property" within the meaning of sect. 18 (1) of the Finance Act, 1894, but is considered a part of the original succession, consequently the Succession Duty on such a cesser will be assessable under the Succession Duty Act, 1853, unless the property, out of which the annuity issued, itself formed the subject of a succession upon a death after the 1st August, 1894, and the successor was competent to dispose of such property.

Cesser of dower or curtesy is a succession to real property and not a part of the old succession, where the intestate died before the 2nd August, 1894.

Where a person, who already has a life interest in real estate, succeeds by a death, after the 1st August, 1894, to the fee simple, the decision in *Att.-Gen.* v. *Robertson*, [1893] 1 Q. B. 293, is considered to apply, and Succession Duty becomes payable on the principal value of the enlargement.

Example:—

A. settles Blackacre on his son B. for life, remainder to C. (B.'s wife) for life, remainder to their children in fee, in default to B. in fee. C. dies in 1906 without children, and B. succeeds to the fee of Blackacre, and thereby his life estate is enlarged to a fee simple estate. Succession Duty is payable on the principal value of Blackacre, less the value of B.'s life interest therein.

If the real estate is subject to a trust for sale at or immediately after the deceased's death, the successor does not succeed to real property, but to the moneys to arise from the sale of real property, therefore the actual proceeds of sale (or full estimated saleable value if it is unsold at the date of the delivery of the Succession Duty account) is the measure of taxation. It will be seen this may materially affect the value where the property falls to be valued as "agricultural" under the proviso to sect. 7 (5) of the 1894 Act. (See also sect. 18 (2).)

"**Succession . . . arising on the death of a deceased person**" means the act of succeeding to a succession in real property on the death of a deceased person.

A "succession arising" in sect. 58 (4) of the Finance (1909–10) Act, 1910, was in *Hamilton* v. *Lord Advocate* held to mean a succession dutiable under the Succession Duty Act, 1853, and it is conceived that a "succession to real property arising" in this sub-section has a similar meaning.

"**Deceased person**" means a person dying after the 1st August, 1894. (See sect. 22 (1) (a).)

Consequently, although the deceased may have surrendered his life interest to the successor before the 2nd August, 1894, the Succession Duty payable under sect. 15 of the Succession Duty Act, 1853, as upon an accelerated succession, is assessable upon the principal value where the successor is competent to dispose, and assuming that no Estate Duty is payable, the additional Succession Duty rates of ½ and 1½ per cent. under sect. 21 (1) of the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), will also be payable.

Example:—

A. (who died in 1890) devised Blackacre to his son B. for life (died 1906), remainder to his son C. in fee. B. surrendered his life interest in 1893 to C. Succession Duty is payable on B.'s death on the principal value of Blackacre at 1½ per cent. by C.

"**Competent to dispose.**"—This phrase is defined in sect. 22 (2) (a).

The competency to dispose (it is thought) is to be ascertained when the successor becomes entitled in possession.

Examples:—

1. A. (who died 1892) devised Blackacre to B. for life, remainder to C. in tail. By deed of 1893 B. and C. disentail and re-settle to B. for life (died 1905), remainder to C. for life, remainder to C.'s first, &c., son in tail. On B.'s death Succession Duty is payable on C.'s life interest only.
2. A. (who died 1895) devised Whiteacre to B. for life, remainder to C. in fee. B. and C. by deed in 1899 re-settle to B. for life (died 1906), remainder to C. for life, remainder to D. in fee. On B.'s death Succession Duty is payable on C.'s life interest only.

In each of the above examples, if there had been no re-settlement, Succession Duty would have been payable by C. on the principal value.

3. A. (died 1895) devised Blackacre to his brother B. for life (died 1906), remainder as he should by deed or will appoint, in default to C. (a nephew) in fee. On A.'s death Succession Duty is payable by B. on the principal value of Blackacre, since B. is competent to dispose thereof. On B.'s death without exercising such power of appointment, C. will be liable to pay Succession Duty again on the principal value.
4. A. (died 1896) devised Blackacre to his brothers, B. (died 1906), C., and D. as joint tenants. On A.'s death B., C., and D. are liable to pay Succession Duty on the principal value of Blackacre, and on B.'s death, in default of severance, C. and D. are liable to pay Succession Duty on the principal value of one-third of Blackacre.

The competency to dispose may be negatived by a covenant (dated prior to the succession falling in) to settle after acquired property.

Although under the instrument creating the succession the

successor may take absolutely, he may (by some prior instrument) have covenanted to settle all after acquired property, so as to bind the property in question and cut down his absolute interest to a life estate, then he is not competent to dispose, and the sub-section does not apply.

Example:—

A. (died 1897) devised Blackacre to his sister B. in fee. By marriage settlement of 1892, B., on her marriage, covenanted to settle all after acquired property on herself for life, remainder to her husband for life, remainder to her children equally. On A.'s death, since B. is not competent to dispose, Succession Duty is payable on her life interest only.

The successor must be "competent to dispose" under the title which creates the succession; if he derives his competency to dispose by some other means, Succession Duty is not payable on the capital.

Examples:—

1. A. (died 1890) devised Blackacre to B. for life (died 1911), remainder to C. for life, remainder to D. in fee. In 1903 D. conveyed his remainder in fee to C. Succession Duty is payable on C.'s life interest only.
2. A. B. (died 1879) devised Blackacre to S. J. for life (died March, 1902), remainder to C. D. (nephew) for life (died April, 1903), remainder to testator's right heirs, viz., W. B., who died in 1892 intestate leaving said C. D. his heir-at-law, and therefore C. D. was entitled in fee on the death of S. J. As C. D. was not competent to dispose of Blackacre by virtue of A. B.'s will, Succession Duty is payable on C. D.'s life interest only, and one instalment only of this duty is payable in above case. (See sect. 21 of the Succession Duty Act, 1853.)

"**Principal value.**"—Prior to this Act, Succession Duty was, under sect. 21 of the Succession Duty Act, 1853, calculated on the value of an annuity, equal to the annual value of such property, for the life of the successor, and was payable by eight equal half-yearly instalments, commencing twelve months after the successor shall have become entitled to the beneficial enjoyment of the real property, or under sect. 22 of the Customs and Inland Revenue Act, 1888, by two equal moieties as therein mentioned. These sections still apply if the successor is not

competent to dispose, but if he is competent to dispose, the duty is calculated on the saleable value. (See sub-sect. 2.) If the successor is a person who has purchased the property for full value before the Finance Act, 1894, the Succession Duty is assessable on his life interest whether he takes for life or in fee, because of the interpretation placed on sect. 21 (3) of the Finance Act, 1894. (See p. 296, and see the decision of the House of Lords in the *Duke of Northumberland and others* v. *The Att.-Gen.*, [1905] A. C. 406.)

Where a life tenant and the remainderman mortgage the fee of the settled estates, as was done in the case of *Earl Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198 (see p. 8), and in *Re Trevor B. Hamilton's Estate*, 39 Ir. L. T. 272 (see p. 15), the Succession Duty on the proportion of the estates attributable to the mortgage (this proportion is not liable to Estate Duty; see those cases) is leviable on the saleable value under sect. 18 (1) of the Finance Act, 1894, where the remainderman takes in fee, but on his life interest only, if the immediate successor takes for life.

"**After deducting the Estate Duty payable in respect thereof on the said death.**"—Estate Duty is, by sect. 9 (1), a charge on the property which does not pass to the executor as such. The Estate Duty on freeholds or copyholds may therefore be deducted against the principal value of the property for the purpose of Succession Duty, but as the Estate Duty on leaseholds of which the deceased died absolutely possessed is not a charge thereon, it cannot be deducted against Succession Duty unless it was actually payable thereout by reason of there being a deficiency of pure personal estate.

A specific devisee of real estate given "free from Estate Duty," which is directed to be paid out of the residuary personal estate, may, notwithstanding such freedom from duty, deduct the Estate Duty in his Succession Duty account, Form 6-1, because of the above words. In such a case the Estate Duty could also be deducted by the legatee of the residuary personal estate, because, as a fact, it is a payment made by him. This does not apply to a bequest of leaseholds absolutely, because in that case Estate Duty is payable out of the residuary personal estate and not "in respect" of the leaseholds separately.

"**Expenses, if any, properly incurred of raising and paying the same.**"—See sect. 9 (5) and notes there as to expenses incurred in raising the Estate Duty.

The expenses incurred in paying the Estate Duty are not allowed unless they are the expenses of "raising and paying."

"**And the duty shall be a charge on the property.**"—This enables the Crown to proceed against the property in the hands of a purchaser for value, except when sect. 12 of the Customs and Inland Revenue Act, 1889, applies.

The duty is payable out of the *corpus* of the property and not out of the interest of any successor, who may have only a life interest, with an absolute power of appointment by will on his own death.

"**By the same instalments as are authorised by this Act.**"—That is, eight yearly or sixteen half-yearly instalments. (See sect. 6 (8).)

If the successor is competent to dispose *by will*, all the instalments are payable, although he may die before they are all due. (See sect. 21 of the Succession Duty Act, 1853.) But if the successor is competent to dispose, but *not* by will, then regard must be had to sect. 21 of the Succession Duty Act, 1853, and sect. 22 of 51 Vict. c. 8, and only such instalments will be payable as would have been payable if the Finance Act, 1894, had not passed.

If the real property is sold, so that all the instalments of Estate Duty become payable under sect. 6 (8) of the Finance Act, 1894, it seems to follow that as the instalments of Succession Duty are to be the same as for Estate Duty, all the instalments of Succession Duty likewise become payable; but this is not pressed by the office.

"**Interest.**"—Interest at 3 per cent. (4 per cent. after 30th July, 1919, sect. 30, Finance Act, 1919) per annum is payable on all the Succession Duty unpaid as from twelve months after the successor becomes entitled in possession.

"**The provisions with respect to discount.**"—Under the Succession Duty Act, 1853, s. 40, discount was allowed at 4 per cent., but this was reduced to 3 per cent. by Treasury letter of the 12th August, 1896, under the powers in that section. If the successor is competent to dispose, discount can only be obtained now by payment before the first instalment falls due.

On and after the 31st July, 1919, discount is apparently to be calculated at 4 per cent.: sect. 30 of the Finance Act, 1919.

(2) The principal value of real property for the purpose of Succession Duty shall be ascertained in

the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate Duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate Duty.

"**Principal value.**"—See sect. 7 (5) and (7) as to how the principal value is to be ascertained.

The value of timber trees and wood for the purpose of Succession Duty is now to be ascertained in accordance with sect. 61 (5) of the 1910 Act, as amended by sect. 9 of the Finance Act, 1912.

"**Agricultural property.**"—See sect. 7 (5) as to how the value of agricultural property is to be acertained for Estate Duty.

See sect. 60 (1) of the Finance (1909–10) Act, 1910, which repeals the proviso to sect. 7 (5) except as mentioned in sect. 61 (1) of the 1910 Act.

If agricultural land is subject to a *trust for sale* immediately *after* the death, being at the moment when "the passing" takes place physically land, it is to be valued for Estate Duty purposes in accordance with the proviso to sect. 7 (5) of the Finance Act, 1894, except that when the deceased died on or after the 30th April, 1909, it is only to be so valued in the cases mentioned in sect. 61 (1) of the 1910 Act. For the purpose of *Succession Duty*, however, the point to consider is the nature of the property to which the successor is entitled as constituting his succession. In such a case his beneficial title is not to real property as such, but to the moneys to arise from the sale of real property, and this right is not dependent on the property being actually sold. Accordingly, the actual proceeds of sale, or its full estimated saleable value if it is unsold at the date of delivery of the Succession Duty account, is the measure for taxation.

The value of property for the purpose of *Legacy Duty* is not in any way affected by the Finance Acts.

"**The annual value for the purpose of Succession Duty shall be arrived at in the same manner as . . . for the purpose of Estate Duty.**"—This is thought to apply whether the agricultural property passes to successor for life, or any less period,

as well as where the successor takes in fee. As sect. 60 (1) of the Finance (1909–10) Act, 1910, abolished the proviso to sect. 7 (5) of the Finance Act, 1894, in the case of any person dying on or after the 30th April, 1909, it follows that only such deductions as are authorised by the Succession Duty Act, 1853, can now be allowed except in the cases mentioned on p. 154.

Expenses of management could only be deducted in Succession Duty accounts prior to the 30th April, 1909, if the property was agricultural.

Local Taxation Grant.

19. In substitution for the grant out of the Probate Duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the Estate Duty derived from personal property, such sum as the Commissioners, in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which Estate Duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by sect. 27 of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first-mentioned Acts shall apply, as if the sum so determined were the Probate Duty grant or one half of the proceeds of the sums collected in respect of the Probate Duties (as the case requires) within the meaning of those Acts.

By sect. 21 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the Commissioners of Inland Revenue were directed to pay, under such regulations as the Treasury might prescribe, four-fifths of one-half of the Probate, Inventory, and Account Duties to the Local Taxation Account, at the Bank of England, to be applied in relief of total taxation.

By sect. 1 of the Probate Duties (Scotland and Ireland) Act, 1888 (51 & 52 Vict. c. 60), the Commissioners were similarly directed to pay to the Local Taxation (Scotland) account

11-100ths of one-half, and to the Local Taxation (Ireland) account 9-100ths of one half of the same duties, to be applied in relief of local taxation in Scotland and Ireland respectively.

Sect. 21 of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50), re-imposed the grant as to Scotland.

Sect. 19 of the Finance Act, 1894, in view of the above grants, substituted 1½ per cent. on the net value of so much of the personal property paying Estate Duty as would have paid Probate or Inventory Duty under sect. 27 of the Customs and Inland Revenue Act, 1881, if the Finance Act, 1894, had not been passed. It will be observed that the personal property that would have paid Account Duty is not to be included. The fixed Probate Duty stamp of 30*s.* was not paid under sect. 27 of the Customs and Inland Revenue Act, 1881, but under sect. 33 of that Act, nevertheless, as the property covered by such stamp was within the charge of sect. 27, it is considered that 30*s.* and 50*s.* stamp cases are liable to contribute under sect. 19.

By Treasury minute of the 11th March, 1895 (39th Report of the Commissioners of Inland Revenue, p. 150), the Treasury directed the following sums to be transferred to the Local Taxation accounts, viz., 1½ per cent. on the net capital of personal property in the United Kingdom included in Inland Revenue affidavits or inventories other than those bearing 30*s.* or 50*s.* stamp; 1½ per cent. on 170*l.* for each 30*s.* affidavit; 1½ per cent. on 310*l.* for each 50*s.* affidavit.

Further sums are directed to be paid out of the proceeds of the Estate Duty in aid of local taxation by the following Acts:—

(1) The Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 2 (2).

(2) The Agricultural Rates Congested Districts and Burgh Land Tax Relief (Scotland) Act, 1896 (59 & 60 Vict. c. 37), s. 3 (1).*

(3) The Local Taxation (Ireland) Estate Duty Act, 1896 (59 & 60 Vict. c. 41), s. 1 (1), but this was repealed by the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 48 (1).

Sect. 17 of the Finance Act, 1907, amended the method of arriving at grants to the local taxation account.

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* These two Acts were extended by the Agricultural Rates Act, 1896, &c., Continuance Act, 1901 (1 Edw. 7, c. 13), and the Agricultural Rates Act, 1896, &c., Continuance Act, 1905 (5 Edw. 7, c. 8), to the 31st March, 1910.

British Possessions.

20.—(1) Where the Commissioners are satisfied, that in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in respect of that property on the same death.

"**Where the Commissioners are satisfied.**"—Since the death duties in British possessions are liable to alteration from time to time, the Commissioners are not satisfied that the duties are payable, unless proved by the certificate of the proper officer of the British possession of the actual payment of the duty with a schedule of the assets on which the same has been paid.

"**British possession**" is defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (2), which applies to all Acts "unless the contrary intention appears" as follows:—

> The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall for the purposes of this definition be deemed to be one British possession.

"**To which this section applies.**" See sub-sects. (3) and (4).

"**Duty is payable by reason of a death in respect of any property situate in such possession.**"—The fiscal authority of the British possession should be consulted for the death duty payable therein.

It is considered that the provisions of sect. 36 of the Companies (Consolidation) Act, 1908 [which is practically a re-enactment and codification of sect. 3 (7) of the Companies (Colonial Register) Act, 1883, and sect. 18 of the Revenue Act, 1889 (see p. 511)], do not make the shares on the Colonial register of a British registered company property situate in the United Kingdom, so as to prevent an allowance under this section if the owner dies domiciled in the United Kingdom.

There are certain companies registered in a British possession, but with a duplicate register in London where shares can be transferred. If the share certificates are in the United Kingdom at the death, the shares are situate in the United Kingdom (see *Re Clark, M'Kechnie* v. *Clark*), and therefore no allowance can

be given for the death duty payable in the British possession, although this section has been applied by Order in Council to such possession, and it is a condition precedent to such transfer that the death duty should be paid in such possession.

"**They shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty.**"—It will be observed that if the duty is paid in a British possession, it is deductible from the Estate Duty, while if the duty is paid in a foreign country, it is deductible only against the value of the property before it pays Estate Duty here. (See sect. 7 (4).)

If it is found that the Colonial duty exceeds in value the Estate Duty payable in the United Kingdom, the balance, if any, can be deducted against any Settlement Estate Duty there may be payable, Settlement Estate Duty being an Estate Duty, but it cannot be deducted against the Estate Duty on any other property.

British debts should be deducted primarily against the British estate, and the deficiency, if any, against the Colonial or foreign assets.

The payment must be proved by a certificate from the proper Colonial authority, or production of the Colonial death duty stamp.

Interest on a Colonial death duty is not authorised to be deducted. Neither can any sum paid for duty on accretions of income since the death be allowed, since such accretions do not pay Estate Duty here.

(2) Nothing in this Act shall be held to create a charge for Estate Duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate Duty.

A rateable part of Estate Duty is, by sect. 9 (1), made a charge on the property which does not pass to the executor *as such*, but that is expressly negatived by this sub-section as to property situate in a British possession while so situate.

The Commissioners must recover the duty from the executor, trustee, or beneficiary here, as they are not authorised to take any proceedings in the British possession. (See *Lord Advocate* v. *Douglas*, p. 518, and *Re Consuelo Duchess of Manchester*, *Duncannon* v. *Manchester*, p. 519.)

(3) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

By sect. 1 of the Foreign Jurisdiction Act, 1913 (3 & 4 Geo. 5, c. 16), sect. 20 may be applied by Order in Council to foreign countries in which for the time being His Majesty has jurisdiction.

Orders in Council have been made applying this section to the following countries and British possessions :—

Date of Orders.	
27 June, 1916.	Australia, Commonwealth of. (Applies to deaths after 21 Dec., 1914.)
11 May, 1895.	Australia, South.
16 July, 1895.	Australia, West.
11 May, 1895.	Bahamas.
29 June, 1896.	Barbados.
11 May, 1895.	Bermudas.
26 Oct., 1896.	British Columbia.
22 Feb., 1896.	British Guiana.
2 Feb., 1895.	British India.
13 Aug. 1895.	Cape of Good Hope. (Now revoked. See sub-s. 4.)
11 May, 1895.	Ceylon.
17 May, 1920.	East Africa Protectorate.
3 Oct., 1895.	Falkland Islands.
24 Aug., 1895.	Fiji.
11 May, 1895.	Gambia.
6 Nov., 1916.	Gambia Protectorate.
16 July, 1895.	Gibraltar.
16 July, 1895.	Gold Coast.
18 Oct., 1909.	Grenada.
11 May, 1895.	Hong Kong.
3 Aug., 1897.	Jamaica.
18 May, 1897.	Labuan.
16 July, 1895.	Lagos (now known as Nigeria).

Date of Orders.	
16 July, 1895.	Leeward Isles.
26 Oct., 1896.	Manitoba.
16 July, 1895.	Natal.
26 Feb., 1897.	New Brunswick.
29 May, 1905.	New South Wales.
2 Feb., 1895.	New Zealand.
8 Mar., 1895.	Newfoundland.
20 Oct., 1898.	Nova Scotia.
12 Aug., 1915.	Nyasaland Protectorate.
26 Oct., 1896.	Ontario.
10 May, 1916.	Papua.
15 Jan., 1897.	Quebec.
1 June, 1916.	St. Lucia.
8 Feb., 1896.	Sierra Leone.
11 May, 1895.	Somers Island.
16 July, 1895.	Southern Nigeria, formerly the Colony of Lagos.
12 Aug., 1915.	Southern Rhodesia.
12 Aug., 1915.	Swaziland.
11 May, 1895.	Straits Settlements.
13 Oct., 1895.	Tasmania.
13 Aug., 1895.	Tobago.
13 Aug., 1895.	Trinidad.
23 Oct., 1917.	Uganda.
8 Feb., 1896.	Victoria.
24 Sep., 1915.	Weihaiwei, Territory of
10 Jan., 1910.	Yukon Territory.
6 Nov., 1916.	Zanzibar.

As to the Date when the Orders in Council take Effect.

In the case of *Lord Advocate* v. *Douglas*, it was contended by the British executors that the Order in Council dated 29th

May, 1905, applying sect. 20 to New South Wales, operated in all cases where Estate Duty was *de facto* paid in this country after 29th May, 1905 (the death of the deceased was on the 6th May, 1905), whether the death in respect of which it had become due occurred prior or subsequent to that date.

The Lord Ordinary, in rejecting this contention, said: "It appears to me that the meaning of sect. 20 is that an Order in Council made in pursuance of it is to be concurrent with the law prevailing in the British possession in question which leads to its being made. And as in this case the Act of the New South Wales Legislature applies only to the case of death occurring after 29th May, 1905, I think the Order in Council made in respect of it has a like operation, and that the present case does not fall within its scope."

It would appear, therefore, that the operation of an Order in Council, when obtained, takes effect from the date when, under the law of the British possession, the requirements of sub-sect. 3 of sect. 20 of the Finance Act, 1894, are fulfilled.

(4) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

The Order as to the Cape of Good Hope was revoked on the 21st November, 1908, in respect of deaths after the 31st December, 1908.

Savings and Definitions.

21.—(1) Estate Duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the first Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

The relief from Estate Duty conferred by this sub-section is considerably narrowed by sect. 55 of the Finance (1909–10) Act, 1910, which enacted that—

> For the purpose of any claim to relief from Estate Duty under sub-sect. (2) of sect. 5, or sub-sect. (1) of sect. 21 of the principal Act, in the case of persons dying on or after the 30th April, 1909, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

The rights of purchasers and mortgagees of property sold or mortgaged before the 30th April, 1909, are protected, however, by sect. 64 of the 1910 Act.

The relief was entirely abolished by sect. 14 of the Finance Act, 1914, in the case of any person dying after the 15th August, 1914, except where the deceased had been party to a marriage with the person on whose death Probate or Account Stamp Duty had been paid.

The rights of purchasers and mortgagees of property sold or mortgaged before the 11th May, 1914 are protected by sect. 16 of that Act.

"**Estate Duty.**" –This includes Settlement Estate Duty. (See sect. 5 (1) (a).)

"**On the death of a deceased person.**"—A deceased person means a person dying after the 1st August, 1894. (See sect. 22 (1) (a).)

"**Personal property.**"—This sub-section only applies to personal property because, obviously, real property does not correctly pay Probate or Account Duty. It will, of course, apply to real property purchased out of personal property that has paid Probate or Account Duty. See

Att.-Gen. v. *Earl of Londesborough.*

The facts of this case, shortly, are as follows:—

Wm. Joseph Denison (who died in 1849) devised certain real estate to the first Lord Londesborough for life (died 1860), remainder to the second Lord Londesborough (afterwards first Earl of Londesborough) for life (died 19th April, 1900), remainder to his first son in tail male. He also bequeathed his residuary personal estate (which had borne Probate Duty) to trustees

to invest in the purchase of real estate to be held on the same trusts as his said real estate.

The personal estate was invested in the purchase of real estate.

The said first earl and his eldest son, by indenture of the 18th May, 1886, disentailed and re-settled all the estates to the use of the said first earl (the second lord) for life in restoration and in confirmation of his former life estate, with remainder, as to part, to the earl's eldest son (afterwards second Earl of Londesborough) for life, remainder to his first son in tail male, and as to other part to the said second earl in fee.

On the death of the first earl in 1900, the Crown claimed Estate Duty on all the settled estates, including the real estate purchased with the residuary personal estate, as passing on his death, "*under the will of the said W. J. Denison as modified by the Indenture of Re-settlement*," on the ground that what passed on the death was real property or real property in equity (some of the real estate purchased with the personal estate having been again sold). The Attorney-General proposed that the words printed in italics should be used in the prayer in the decree in order to avoid any possibility of its being supposed that the decision proceeded on the ground that the settlement was to be regarded as only comprised in the Indenture of Re-settlement.

Channell, J., gave judgment for the Crown, but the Court of Appeal (Collins, M. R., Stirling and Mathew, L. JJ.) reversed his judgment and held that the intention of the Legislature was to prevent property which had paid Probate Duty being again liable to a similar duty, under another name, on the death of a life tenant under the same settlement unless he was competent to dispose.

Mathew, L.J., said the word "*personal*" was superfluous and might be struck out as no other property would be liable to Probate Duty.

Accumulations derived from property which has paid Probate Duty or Account Duty are considered exempt from Estate Duty unless the deceased had been competent to dispose thereof since such payment.

"**Settled.**"—See sect. 22 (1) (h) and (i) of the Finance Act, 1894, and sect. 2 of the Settled Land Act, 1882, which are fully set out on p. 303.

Consequently, if the property is not "settled," this sub-section is thought not to apply. (See case of the *Lord Advocate* v. *McTaggart Stewart*, Part I., p. 26.)

* "**Settled by a will or disposition made by a person dying before the commencement of this part of this Act.**"—The settlor must have died before the 2nd August, 1894, for this sub-section to apply.

"**In respect of which property any duty . . . has been paid or is payable.**"—These duties are Probate Duty or Account Duty. It is sufficient that they are payable, not necessarily paid. It does not, of course, mean Indian Probate Duty.

"**Unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose.**"—It will be observed that if at any time after the date of the deed (if the disposition was by deed) or after the death of the testator (if the disposition was by will) the deceased had been competent to dispose, the exemption from Estate Duty does not apply.

The following examples will help to explain this sub-section:—

1. A. (who died in 1886) bequeathed 1,000*l.* (which paid Probate Duty on A.'s death) to B. for life (died 1895), and then to B.'s son absolutely. Estate Duty is not payable on B.'s death.
2. A. (who died in 1886) bequeathed 1,000*l.* (which paid Probate Duty on A.'s death) to B. for life, and then as he should absolutely by deed or will appoint, and in default to C. B. died in 1895. Estate Duty is payable whether B. exercises the power or not, because B. was "competent to dispose."

Neither of these examples is affected by sect. 55 of the 1910 Act, but Estate Duty would be payable on B.'s death if after 15th August, 1914.

The deceased must be "competent to dispose" at his death or have been "competent to dispose" during his lifetime. It will be observed, therefore, there is a difference in the effect of a release in the deceased's lifetime of a power to appoint by deed and a power to appoint by will only. (See note on p. 112.)

The effect of this section was considered in

Att.-Gen. v. *Dodington.*

The facts are:—

By a marriage settlement of 16th October, 1871, Elizabeth

* There must have been a settlement by the *will* under which Probate Duty was paid. See *Re Viscountess Torrington.*

Frances Popham settled certain funds in trust for herself for life (died 1883), remainder to her husband for life (died 28th August, 1894), remainder as the wife should absolutely by deed or will appoint, and in default to the wife, her executors, administrators, and assigns. The wife appointed by her will, and Probate Duty was paid on her death on the value of the funds less the value of her husband's life interest. Estate Duty was claimed on the husband's death on the whole of the funds.

It was held (by Vaughan Williams and Wright, JJ.) that the will exercising the power must be read into the settlement creating it, and the settlement and will together were a "disposition," and therefore the trust funds appointed by the will were "property settled by a will or disposition" made by the wife, and were exempted from Estate Duty in so far as Probate Duty had been paid upon them. However, in respect of that portion (viz., the value of the husband's life interest) on which Probate Duty had not been paid Estate Duty was chargeable.

The Court of Appeal (Lord Esher, M. R., Smith and Rigby, L. JJ.) affirmed this decision, and Rigby, L. J., pointed out that Probate Duty had, in fact, been paid on the whole of the property (of course, only on its value as a reversion), and, therefore, no Estate Duty was payable on any part of the funds.

This case is not affected by sect. 55 of the 1910 Act, nor by sect. 14 of the Finance Act, 1914.

As a result of the case of *Att.-Gen.* v. *Dodington*, this subsection is considered to apply where the reversioner takes absolutely, predeceasing the life tenant, and Probate Duty is paid on his reversion, provided the settlor died before the 2nd August, 1894, and the life tenant died before the 30th April, 1909.

The object of sect. 55 of the 1910 Act is to prevent the payment of Probate Duty on settled funds in the estate of a reversioner exempting such funds from Estate Duty on the death of the life tenant under the settlement, unless the reversioner was also the settlor.

Examples:—

1. A. (who died in 1882) settled, by marriage settlement of 1872, 1,000*l.* on himself for life, then on his wife B. for life (died in 1895, viz., before 30th April, 1909), and then, in events, to their children, of whom one, C., died in 1892. Probate Duty is paid on C.'s death

on his reversion. No Estate Duty is payable on B.'s death on C.'s share. Estate Duty would be payable if B. died on or after the 30th April, 1909. (See sect. 55 of the 1910 Act.)

2. Take the same facts and dates of deaths as in example 1, but let B. be the settlor, then the Probate Duty on C.'s death will not exempt C.'s share from Estate Duty on B.'s death, the settlor having died after the 1st August, 1894.

3. A. (who died in 1872) settled, by marriage settlement of his daughter B., 1,000*l.* on B. for life (died in 1896, viz., before 30th April, 1909), then to her husband C. for life (living), then to B.'s children, of whom one, D., died in 1892, and Probate Duty is paid on his reversion. No Estate Duty is payable on B.'s death on D.'s share, notwithstanding C. is the actual successor and is living. Estate Duty would be payable if B. died on or after the 30th April, 1909. (See sect. 55 of the 1910 Act.)

4. A. (who died in 1890) settled, by his marriage settlement, 2,000*l.* on himself for life, then to his wife B. for life (died on or after 30th April, 1909), and then in default of children (happened) to A. absolutely. Probate Duty is paid on A.'s reversion. No Estate Duty is payable on B.'s death, because A. is the settlor, and sect. 55 of the 1910 Act does not prevent the relief conferred by sect. 21 (1) of the 1894 Act from applying, and sect. 14 of the Finance Act, 1914, does not affect this example because A. and B. had been parties to a marriage.

In order that property passing on a death may be exempt from Estate Duty under this sub-section, by reason of it passing into the estate of a deceased reversioner and being liable to Probate Duty, there should be no deduction for debts in the Inland Revenue affidavit of such deceased reversioner, because if they are deducted, it is obvious that a proportionate amount of the reversion does not pay Probate Duty, and to that extent Estate Duty will become payable. *Lord Advocate* v. *Mackenzie's Trustees* is an analogous case under sect. 5 (2) of the Finance Act, 1894. (See p. 107.)

Example:—

A. (died 1860), by settlement of 1858, settled 2,000*l.* on B. for life (died in 1898, viz., before 30th April, 1909),

and then for C. absolutely. C. died in 1873 entitled to personal estate in possession of the value of 1,000*l.*, and also entitled to the said sum of 2,000*l.* expectant on the death of B.

The expectant interest was of the value of 1,000*l.* at C.'s death in 1873. The total value of C.'s assets at his death is therefore 2,000*l.* His debts, &c., are (say) 200*l.* Then half of the debts (*i.e.*, 100*l.*) must be regarded as paid out of the assets in possession and half out of the value of the reversion. The proportion of the debts to the value of the expectant interest is thus one-tenth.

It follows that one-tenth of the 2,000*l.* passing on B.'s death must be regarded as notionally applied in satisfaction of the debts of the reversioner, and, therefore, Estate Duty will be payable on B.'s death on the one-tenth of the 2,000*l.* in respect of which no Probate Duty was paid or is payable.

If the reversioner was not absolutely entitled to the reversion, but had a power of appointment only over such reversion, which in default of appointment would not have passed to him absolutely, the principle above mentioned (as to the apportionment of the debts against the reversion) does not apply unless the will of the reversioner exercising the power shows an intention that there should be a blending for all purposes of the property, subject to the power, with the testator's free personal estate.

For example of a case where a fund passes derived from a testator who died before the Finance Act, 1894, and consists partly of personal estate and partly of proceeds of real estate, see *Berry* v. *Gaukroger*, noted, p. 235.

Where a testator, who died before the 2nd August, 1894, domiciled in the United Kingdom, possessed of (a) personal estate in the United Kingdom, and (b) personal estate abroad (Probate Duty was, of course, not payable on the testator's death on the foreign assets), bequeathed a legacy or share of his residuary estate in trust for a legatee for life, who died after the 1st August, 1894, but before 16th August, 1914, Estate Duty is payable on the death of the life tenant in respect of so much of the funds passing on his death as is attributable to the foreign assets. Sect. 21 (1) only exempts the part derived from the assets in the United Kingdom.

As there appears to be no rule of law requiring an executor

in such a case to make every payment out of the estate, rateably out of the English and foreign assets, regard must be had to the actual administration of the estate by the executor in ascertaining the proportion of the settled legacy attributable to the foreign assets, subject to any special directions given by the testator in his will.

Where real and personal property are settled, by the will of a testator dying before the 2nd August, 1894, on the same person for life, and the personal property is applied in paying off mortgages or otherwise improving the real property, then on the death of the life tenant after the 1st August, 1894, but before 16th August, 1914, a deduction in respect of such personal property may be taken in the Estate Duty account against the value of the real property.

Where, however, the personal estate is not settled and is expended in paying off charges on the settled real property, no deduction can be taken in the Estate Duty account against the value of the real property in respect thereof, because that personal estate is *not* settled by the will of a person dying before the 1st August, 1894.

Covenant Debts.

Cases frequently happen in which settled sums secured by covenants escape Estate Duty by reason of this sub-section.

Examples :—

1. A., on the marriage of his daughter B. to D., covenanted that his executors, &c., should, on his death, pay 10,000*l.* to the trustees to be held in trust for B. for life, and then to D. for life, and then to the children of the marriage.

   A. died in 1892, and no deduction was taken against Probate Duty on his death in respect of the 10,000*l.*

   B. died in 1905. No Estate Duty is payable because Probate Duty is considered to have been paid thereon on A.'s death.

2. A., under the same circumstances as 1, covenants that his executors should, on the death of the survivor of himself (died 1892) and his own wife E. (died 1903), pay 6,000*l.* to the trustees of the marriage settlement of B. and D. to be held on the trusts as at No. 1.

   On A.'s death in 1892 no deduction was taken against Probate Duty in respect of the 6,000*l.*

On E.'s death (in 1903) A.'s executors may apply for a return of the Probate Duty on the 6,000*l.* which only then becomes payable, and if a return is given of such Probate Duty then Estate Duty will be payable on E.'s death. But if no such return is sought, Estate Duty will not be payable on the 6,000*l.* on the deaths of E., B., or D. before the 16th August, 1914.

3. A. (who died in 1892) covenanted that he would devise and bequeath one-fifth of his real estate and personal estate to the trustees of his daughter B.'s marriage settlement to be held on the trusts, as in example 1. No deduction could be made against Probate Duty on A.'s death. (See *Moir's Trustees* v. *Lord Advocate.*) Therefore, on B.'s death in 1905, Estate Duty is only payable on so much as was derived from A.'s real estate.

4. A. (who died in 1892) covenanted that his executors, &c., should pay to the trustees of his daughter B.'s marriage settlement, a sum equal in amount to the value of one-fourth of his real estate and personal estate, to be held on the trusts, as in example 1. Although no deduction could be made against Probate Duty on A.'s death in respect of this covenant, still, the sum payable is a debt due from A.'s executors, and so primarily payable out of A.'s personal estate. Therefore, on B.'s death, Estate Duty will only be payable on the part, in a due course of administration, payable out of A.'s real property.

These four examples are not affected by sect. 55 of the 1910 Act, but are affected by sect. 14 of the Finance Act, 1914.

The payment of Probate Duty on property bequeathed to a person who was already bound by a covenant to settle it, does not exempt the property from Estate Duty on the subsequent death of a life tenant under the covenantor's settlement. See

In re Torrington (*Viscountess*).

By a marriage settlement, dated 24th January, 1885, certain freehold hereditaments were conveyed to the trustees of the settlement to certain uses. The settlement contained, *inter alia*, two covenants by the eighth Viscount, (1) to convey to the settlement trustees so much of any property, &c., to which he might become absolutely entitled under the will of the Dowager Viscountess Torrington, to the amount of 5,000*l.*; and (2) to

convey to the settlement trustees any property, &c., to which he might become absolutely entitled under the will of the Dowager Lady Molesworth, up to the value of 20,000*l.* Under the trusts of the marriage settlement all personal property to become subject to the trusts thereof under these covenants was settled upon trust for the eighth Viscount for life, and after his death upon trust for Viscountess Torrington for life, with remainder, in the event which happened, to the ninth Viscount. Under the will of the Dowager Viscountess Torrington, who died on 26th January, 1885, 4,376*l.* was received by the trustees of the settlement, by virtue of a bequest to the eighth Viscount, and was duly invested. The Dowager Lady Molesworth died on 16th May, 1888, having by her will bequeathed to the eighth Viscount an interest in her residuary estate, and a sum of 13,630*l.* was received by the trustees of the settlement in respect of this bequest and invested. The eighth Viscount died on 30th October, 1889, and Emmeline, Viscountess Torrington, on 7th June, 1912. Probate Duty was paid in respect of both these sums on the death of each testatrix. The Commissioners of Inland Revenue claimed Estate Duty on the death of Emmeline, Viscountess Torrington, in respect of those two items, and declined to entertain the claim for exemption by the petitioners, under sect. 21, sub-sect. 1, of the Finance Act, 1894, who urged that this was personal property settled by a disposition made by a person dying before 1st August, 1894, in respect of which property Probate Duty had been paid.

Eve, J., on 29th July, 1914, said that the petitioners contended that each of the two sums in question was either property settled at the date of the death of a person dying before 2nd August, 1894, or, alternatively, settled by a disposition made by a person dying before that date, and in either alternative came within the express terms of sect. 21, sub-sect. 1. The Commissioners of Inland Revenue urged, on the other hand, that the sub-section was dealing with a particular class or species of settled property, and that neither of these sums fell within that class or species. The Act dealt with property settled and unsettled, and in dealing with settled property the intention was to protect it from the liability of paying duty more than once: *Att.-Gen.* v. *Dodington*, [1897] 2 Q. B. 373, 383. But in his Lordship's view the property subject to the covenants in the present case could not be said to be settled by a will or disposition made by a person dying before the commencement of the Finance Act, 1894. It clearly was not, as the

wills had no reference to the trusts. The sub-section dealt with property in the settlement of which, the will or disposition made by the person on whose property Probate Duty was paid or payable played a part, and it was not sufficient to bring the case within the sub-section, even to show that the property was settled by some other instrument at the date when Probate Duty became payable, still less if it only were shown to be subject to a covenant to settle. Before any right to exemption could be established it was necessary to find a will or disposition by the person on whose property Probate Duty was paid or payable, constituting a part of the settlement. Apart, therefore, from any authority, on the construction of the Act, he would have come to the conclusion that this particular property did not fall within the exemption. But the case of *Lord Advocate* v. *Harvey's Trustees*, [1901] 39 Sc. L. R. 71, although arising on sect. 5, sub-sect. 2, of the Finance Act, 1894, was brought into line with this case by the facts and the reasoning, subject only to this, that the parties there were subject to the law of Scotland. If there were in fact no difference in the Scotch and English law on this point, he would have felt it his duty to follow that authority. He would therefore make a declaration that the petitioners were not entitled to the exemption which they claimed, and they must pay the costs of the petition.

A legacy given to a legatee by a codicil to the will of a testator who had bequeathed a legacy by his will to the same legatee on certain trusts is not necessarily settled on the same trusts. See

Re Fanny Robertson (deceased), J. F. Robertson v. *The Commissioners of Inland Revenue.*

A testator by his will bequeathed 3,000*l.* to his trustees for the separate use of his daughter Fanny (the deceased) for life, with remainder to her children as she might appoint, and in default equally.

By a codicil the testator made the following bequest: "In addition to the sum to which my daughter Fanny is entitled under my will, I hereby leave and bequeath to her a further sum of 1,000*l.*, together with all my furniture, &c." The testator died in 1870. The deceased settled the 1,000*l.* on her marriage in 1879 in the same way as the 3,000*l.*, and Estate Duty was paid upon it as passing at her death under her marriage settlement.

The appellant contended that the 1,000*l.* was settled by the

will and codicil, and passed thereunder, and that the exemption in sect. 21 (1) of the Finance Act, 1894, applied, and he claimed repayment of the Estate Duty.

It was held by the Recorder of Dublin, on 28th October, 1903, that the Estate Duty was correctly paid. (*Hill* v. *Jones*, 37 L. J. Ch. 465, followed.)

EXAMPLES OF COMPOSITE SETTLEMENTS UNDER SECT. 21 (1) :—

I.—A testator, A. (died 1870), *bequeathed personal estate (which paid Probate Duty on A.'s death) to B. for life (died* 1890), *and then to C. absolutely.*

The following are examples of a variety of settlements made by C. of his reversion :—

(a) C., by settlement of 1878, settled said personal estate on himself for life (died 1880), remainder to D. for life (died 1901), remainder to E. absolutely.

(b) C., by settlement of 1878, settled said personal estate on himself for life (died 1895), remainder to D. for life (died 1901), remainder to E. absolutely.

(c) C., by settlement of 1878, settled said personal estate on D. (not C.'s wife) for life (died in 1895), remainder to C. for life (died 1901), remainder to E. absolutely.

(d) C., by settlement of 1878, settled said personal estate on D. (C.'s wife) for life (died in 1895), remainder to C. for life (died 1901), remainder to E. absolutely.

In the above examples, since the settlement made by the will of A. was entirely at an end on the 2nd August, 1894, when the Finance Act, 1894, came into operation, it is thought that the words "settled by a will or disposition" in sect. 21 (1) can have no reference to the will of A., but the settlement of 1878 only is to be considered in each case, and therefore Estate Duty is payable in the above examples as follows: In (a) on death of D.; in (b) on death of C.; in (c) on death of D.; and in (d) on death of C. (See sect. 21 (5) for explanation of why there is no claim on the death of D. in last example.)

II.—A testator, A. (died 1870), *bequeathed personal estate (which paid Probate Duty on A.'s death) to B. for life (died* 1898), *then to C. absolutely.*

The following are examples of a variety of settlements made by C. of his reversion :—

(a) C., by settlement of 1878, settled said personal estate on himself for life (died 1880), remainder to D. for life (died 1900), remainder to E. absolutely.

(b) C., by settlement of 1878, settled said personal estate on himself for life (died 1897), remainder to D. for life (died 1900), remainder to E. absolutely.

(c) C., by settlement of 1895, settled said personal estate on himself for life (died 1897), remainder to D. for life (died 1900), remainder to E. absolutely.

(d) C., by settlement of 1878 or 1895, settled said personal estate on himself for life (died 1899), remainder to D. for life (died 1900), remainder to E. absolutely.

(e) C., by settlement of 1878, settled said personal estate on D. (not C.'s wife) for life (died 1899), remainder to C. for life (died 1900), remainder to E. absolutely.

(f) C., by settlement of 1878, settled said personal estate on D. (C.'s wife) for life (died 1899), remainder to C. for life (died 1900), remainder to E. absolutely.

(g) C., by settlement of 1895, settled said personal estate on D. for life (died 1899), remainder to C. for life (died 1900), remainder to E. absolutely.

(h) C., by settlement, 1873, settled said personal estate on his wife D. for life (died 1911), remainder to himself for life (died 1902), remainder to E. absolutely.

There is, of course, no Estate Duty payable on B.'s death under the will A. in example II., sect. 21 (1) applies.

With reference to the question of Estate Duty under the settlements made by C., since the will of A. was in force as a subsisting settlement on the 2nd August, 1894, the above personal estate falls within the words "personal property settled by a will or disposition made by a person dying before the commencement" of the Finance Act, and A.'s will and C.'s settlement form a composite settlement. Therefore, in each of examples II. (a), (b), (c), (d), (e), (f), and (g), there is no Estate Duty payable on D.'s death because he had never been "competent to dispose" since A.'s death.

In examples II. (b), (c), and (h), there is no Estate Duty on C.'s death because his interest failed before it became an interest in possession. (Sect. 5 (3).)

In example II (f) there is no claim for Estate Duty on the death of D. because of sect. 21 (5) of the 1894 Act.

In examples II. (d), (e), (f), and (g), Estate Duty is payable

on C.'s death, because he had been competent to dispose since A.'s death.

In example II. (h) Estate Duty is payable on the death of D. because, although D. was never "competent to dispose," there has been the death of a person C., who had been competent to dispose since the will of A. took effect.

These examples do not apply in the case of a tenant for life dying after 15th August, 1914. (See sect. 14 of the Finance Act, 1914.)

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

"**Before the commencement of this part of this Act**," viz., on or before the 1st August, 1894.

"**The duties mentioned in the First Schedule**," viz., Probate Duty, Account Duty, Succession Duty (with the additional ½ and 1½ per cent. rates), Legacy Duty, and temporary Estate Duty.

"**Shall continue to be payable.**"—

Example :—

A. (who died in 1903) settled by his marriage settlement 1,000*l.* on himself for life, and then to his wife B. for life (predeceased), and then to his children of whom one, C., died in 1892. Estate Duty is payable on A.'s death, and Probate Duty is payable on C.'s share.

The interpretation placed upon the fifth paragraph of the First Schedule to the principal Act, to a certain extent, modifies the effect of this sub-section. (See the examples set out after that schedule.)

(3) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the

mortgagor shall rank as a charge subsequent to that of the mortgagee.

"**Interest in expectancy.**"—By sect. 22 (1) (j), this includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases.

"**Before the commencement of this part of this Act,**" *i.e.*, before the 2nd August, 1894.

"**Full consideration in money or money's worth.**"—See notes to sect. 3 (1) and sect. 7 (1) (a).

"**No other duty.**"—These words are officially construed to mean the same as "*no other sum* for Duty," and therefore to exempt such property not only from Estate Duty, but also from the liability to pay Succession Duty on the capital under sect. 18 of the Finance Act, 1894.

Examples:—

1. A. settled, by deed in 1882, Blackacre on his son B. for life (died 1905), remainder to B.'s son C. in fee. C. sold his interest before 2nd August, 1894, to D. No Estate Duty is payable on B.'s death because of this sub-section, and the Succession Duty, instead of being assessed on the capital value on Form 6—1 under sect. 18 of the 1894 Act, is assessed at 1½ per cent. on Form 6 on the value of an annuity for D.'s life only, a smaller amount. (See sect. 15 of the Succession Duty Act, 1853.)
2. Same facts as in 1, but D. died in 1893 and devised Blackacre to F. in fee. No Estate Duty is payable on B.'s death, and F. pays Succession Duty on the value of his *life interest* (not on the capital value) as derived from D. as predecessor.
3. Same facts as in 1, but B. and C. together sold Blackacre in possession before 2nd August, 1894, to D., and retained the proceeds of sale on the orginal trusts, so that the proceeds paid Estate Duty on B.'s death, then the purchaser D. would not be liable to Succession Duty on B.'s death because of the relief afforded by sect. 1 and the First Schedule to the Finance Act, 1894. (See also sect. 22 (1) (f).)
4. Same facts as in 3, but proceeds of sale divided between B. and C. in B.'s lifetime. Succession Duty at 1½ per

cent. is payable on B.'s death on Blackacre by D. (as alienee of C.) on value of *his* life interest. (See *Duke of Northumberland* v. *The Att.-Gen.*)

5. Facts as in 3, but proceeds of Blackacre not held on the original trusts and D. died (in B.'s lifetime) after 2nd August, 1894, and having devised Blackacre to E., Estate Duty was paid on Blackacre on D.'s death. The Succession Duty is payable on Blackacre on B.'s death at 1½ per cent. on life interest of E. (See *Duke of Northumberland and others* v. *The Att.-Gen.*) The Estate Duty paid has no reference to B.'s death.
6. A. settled Blackacre by deed in 1872 on his son B. for life (died 1907), remainder to C. (stranger to A.) in fee. B. and C. sold Blackacre before 2nd August, 1894, to D. and retained the proceeds on the original trusts, so that Estate Duty became payable thereon on B.'s death. Succession Duty is assessable on the life interest of D. (as alienee of C.) at 10 per cent. (not 11½ per cent.).

If, in the above examples 1 to 6, B. died on or after the 30th April, 1909, the duties would be unaffected by the 1910 Act, because of sect. 64 of that Act.

"**Shall be payable by the purchaser or mortgagee.**"—This sub-section only relieves directly the purchaser or mortgagee, not the vendor nor a person deriving title gratuitously from the purchaser or mortgagee; but in practice no Estate Duty is claimed either against the vendor or against any person to whom the purchaser may have gratuitously assigned his reversion.

Examples:—

1. A. (died 1883) devised Blackacre to B. for life (died 1897), remainder to C. in fee, who sold in 1890 to D. D. by deed of gift in 1896 conveys his interest to E. No Estate Duty is payable on B.'s death.
2. But supposing in the above example D. had died in 1896 devising the said estate to E. Estate Duty would, of course, be payable on Blackacre as part of D.'s estate when it fell into possession on B.'s death unless Estate Duty had been paid on it when in reversion.

   Succession Duty is payable by E. on the value of his own life interest at the rate C. would have paid as derived from A. as predecessor. (See sect. 15 of the Succession Duty Act, 1853, and *The Duke of Northumberland* v. *Att.-Gen.*)

If the reversion has been mortgaged and the mortgage does not exhaust the property, Estate Duty is still payable, so far as the equity of redemption will pay it. The mortgagee is protected, but not the mortgagor.

In re Colonel G. A. Vernon (deceased).

By the wills of Leveson Vernon, proved in 1832, and of Sir Henry F. Cooke, proved in 1837, certain properties were devised to Colonel Geo. A. Vernon for life (died 1896), with remainder to Bertie Wentworth Vernon in fee. By indentures of 15th October, 1877, and 3rd June, 1880, B. W. Vernon granted and sold annuities of 684*l.* and 568*l.* issuing out of the said properties. By an indenture of 21st October, 1887, he charged his interest in expectancy with the sum of 10,555*l.* for the consideration therein mentioned. By indentures of 30th October, 1890, and 9th May, 1892, he mortgaged his said interest to secure the sums of 52,600*l.* and 3,000*l.* The said sales and mortgages were all made for full consideration in money.

On the death of Colonel G. A. Vernon, the said B. W. Vernon sought to deduct the value of the said annuities and also the sums of 10,555*l.* and 55,600*l.* against the principal value of the properties in the Estate Duty account for the purpose of ascertaining the sum liable to Estate Duty.

Held (by Kennedy and Phillimore, JJ.) that such deductions could not be taken; sect. 21 (3) did not apply, as that section was only a protection to the mortgagee.

Phillimore, J., based his judgment on the fact that although there was not sufficient surplus after deducting the value of the annuities and the mortgages from the principal value of the estates passing on the death to pay the Estate Duty in full, yet, as the annuities were also issuing out of other property called Stoke Park (not liable to Estate Duty because Colonel G. A. Vernon had surrendered his life interest therein), there was a surplus if a due proportion of the annuities was thrown on the Stoke Park estate.

"**When the interest falls into possession.**"—In the case of *Att.-Gen.* v. *Walker*, *Re Reversionary Interest Society*, where the reversion sold was subject to two prior successive life interests, on the death of the first of the life tenants Estate Duty was claimed because it could not be said that the interest had then *fallen into possession*, but the case was compromised by the payment of Estate Duty, the Commissioners of Inland Revenue

agreeing to repay, without interest, on the death of the second life tenant the difference between the Estate Duty so paid and the duties that would have been payable before the Finance Act, 1894, on the second death.

Similarly, if property in reversion is sold prior to 2nd August, 1894, subject to a jointure rent-charge which becomes payable on the death of the tenant for life to his widow for life, Estate Duty is payable on the death of the life tenant on the capital necessary to produce the jointure, and this duty is returned on the death of the jointress.

"**And in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.**"—That is, the difference between the duties that would have been payable before the Finance Act and the Estate Duty ranks subsequent to that of the mortgagee.

It may be pointed out that it sometimes happens that the Estate Duty is less than the duties that would have been payable before the Finance Act.

Example :—

A. settled 400*l.* on himself for life (died 1905), and then to his son B. absolutely, who sold in 1893 to C. If no other property passes on A.'s death, the rate of Estate Duty would be 1 per cent. = 4*l.*, the rate of Succession Duty, if no Estate Duty is payable, would be 1½ per cent. = 6*l.*

It is arguable that C. has the option of paying Estate Duty and not Succession Duty in such a case, but perhaps the better view is that the effect of this sub-section is to leave the purchaser in exactly the same position as he would have been if the Finance Act had not passed, and, therefore, Succession Duty at 1½ per cent. is payable.

Where only a fractional part of the interest in expectancy has been sold, this sub-section is considered to apply, so as to take such fractional part out of the charge of Estate Duty.

(4) The Settlement Estate Duty of 1 per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

This sub-section is repealed by sect. 18 (1) of the Finance Act, 1914.

"**Settlement Estate Duty.**"—See sect. 5 (1) as to when this is payable if the property is settled by a disposition taking effect *after* the 1st August, 1894.

"**Of one per cent.**"—In the case of persons dying on or after the 30th April, 1909, the rate is now 2 per cent. (See sect. 54 of the 1910 Act, subject, however, to the rights of purchasers and mortgagees as mentioned in sect. 64 of that Act.)

"**Disposition which has taken effect before the commencement of this part of this Act.**"

Settlement Estate Duty is not payable if the property was settled (1) by the will of a testator who died before the 2nd August, 1894, or (2) by a deed dated before that date.

The effect of this sub-section is fully considered in the chapter on Settlement Estate Duty.

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty shall not be payable in respect of that property until the death of the survivor.

Four conditions are necessary in order that this section should apply:—

(1) The settlement must be dated before 2nd August, 1894.

(2) The surviving spouse must be the settlor.

(3) The deceased spouse must have been entitled alone or jointly with surviving spouse to the income of the settled property.

(4) The income and not the *corpus* of the property must pass to the settlor.

Att.-Gen. v. *Strange.*

By marriage settlement of 14th January, 1846, on marriage of Jas. Strange to Charlotte Eyre, the wife settled certain personal estate on her husband for life (died 1st November, 1894), and then on herself for life, remainder if wife should be survivor, then after decease of the husband to the wife absolutely, if husband should be survivor certain other trusts were declared.

The Crown claimed Estate Duty on the death of the husband, and that sub-sect. 5 of sect. 21 did not apply as the wife became entitled to *capital* as distinguished from *income*.

The Court of first instance (Williams and Kennedy, JJ.) decided against the Crown, but the Court of Appeal (Lindley, M. R., Rigby and Collins, L. JJ.) reversed this decision, and held the section did not apply.

The survivor must be entitled to the capital under the settlement to prevent this sub-section applying. If the survivor is entitled to the *income* only under the settlement, but with a power to appoint the *capital* to himself or herself absolutely, this sub-section applies to prevent Estate Duty attaching, notwithstanding the survivor may after the death appoint the capital to himself or herself.

Example:—

A., by voluntary settlement in 1875, settled 1,000*l.* on his wife B. for life (died 1899), and then for himself for life, and capital as he should absolutely appoint. In default to their children in equal shares. By deed poll in 1900 A. appointed the 1,000*l.* to himself absolutely. No Estate Duty is payable by A. on B.'s death.

This sub-section does not apply where the survivor's life interest is not derived under an instrument which took effect before the 2nd August, 1894, even though the deceased's life interest was derived under an instrument which took effect before 2nd August, 1894.

It may be observed that in cases similar to *Att.-Gen.* v. *Strange*, but where the deceased died after the 1st July, 1896, Estate Duty is payable notwithstanding sect. 15 (1), (2), and (3), of the Finance Act, 1896, because of the "other interests" created if the husband had survived. (See *Att.-Gen.* v. *Penrhyn and another*, p. 326.)

The Deceased Wife's Sister's Marriage Act, 1907 (7 Edw. 7, c. 47), which declared that marriage with a deceased wife's sister should not be deemed to be void or voidable as a civil contract, provided in sect. 2 that:—

"No claim by the Crown for duties leviable on or with reference to death, and before the passing of this Act due and payable, and no payment, commutation, composition, discharge, or settlement of account in respect of any duties leviable on or with reference to death before the passing of this Act duly made or given, shall be prejudicially affected by anything herein contained."

This Act was passed on the 28th August, 1907. It follows, therefore, that this sect. 21 (5) of the Finance Act, 1894, can afford no protection to the surviving spouse of a marriage made between a man and his deceased wife's sister, where the deceased spouse died before the 28th August, 1907, in respect of duties actually due and payable before the 28th August, 1907.

Where the duties are being paid by instalments, and no duty would have been payable if the marriage had been legal at its celebration, then only such instalments as actually fall to be paid before the 28th August, 1907, will now be payable.

22.—(1) In this Part of this Act, unless the context otherwise requires :—

(a) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act:

"**After the commencement of this Part of this Act**," *i.e.*, after the 1st August, 1894. (See sect. 24.)

(b) The expression "will" includes any testamentary instrument:

(c) The expression "representation" means probate of a will or letters of administration:

(d) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person:

"**An executor**" includes an executor *de son tort* for the purposes of the *obligations* of the Act, but not for the *powers* and *benefits* of the Act.

Where an English company transferred shares standing in the name of a foreign testator, who was the registered holder thereof, to his executors, who had not obtained probate of his will in England, the company were held to have administered part of his estate, and to be liable to deliver an account and pay such duty as would have been payable if probate had been taken in England. (See *Att.-Gen.* v. *New York Breweries Co., Ltd.*, p. 124.)

(e) The expression "Estate Duty" means Estate Duty under this Act:

"**Estate Duty**" includes Settlement Estate Duty. (See note to sect. 5 (1).)

(f) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale:

(g) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property:

"**Agricultural property.**"—See sect. 7 (5) of the Finance Act, 1894, and sect. 60 (1) of the 1910 Act.

"**Woodland.**"—See sect. 61 (5) of the 1910 Act, and sect. 9 of the 1912 Act.

"**Cottages.**"—See sect. 18 of the 1911 Act.

(h) The expression "settled property" means property comprised in a settlement:

(i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust:

"**Settlement.**"—The first four sub-sections of sect. 2 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), are as follows:—

2.—(1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before or partly after, the commencement of

this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3) Land, and any estate or interest therein, which is the subject of a settlement, is, for purposes of this Act, settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

It is considered that sect. 58 of the Settled Land Act, 1882, is to be read into sect. 2, which thereby is somewhat enlarged in its effect.

"**Parol trust**," if relating to land or chattels real, must be evidenced by writing under the Statute of Frauds, s. 7 (29 Car. II. c. 3), but parol trusts of pure personal estate do not require to be evidenced by writing.

(j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:

"**Interest in expectancy.**" — This expression is used in sect. 7 (6), sect. 12, and sect. 21 (3) of the Finance Act, 1894, and in sect. 55 of the 1910 Act.

A policy of insurance on the life of another person is not an interest in expectancy but an inchoate chose in action.

"**Leases.**"—The reversions expectant on the determination of leases are expressly excluded, because when an estate subject to a lease passes on a death, the value (being the saleable value) is arrived at by taking into consideration the present ground rent and the reversion on the determination of the lease.

(k) The expression "incumbrances" includes mortgages and terminable charges:

(l) The expression "property passing on the death" includes property passing either immediately

on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":

Passing "**immediately**" on the death, as, for example, where the limitation is to the deceased for life, and then to his children.

"**Or after any interval.**"—For example, to the deceased for life, and then to accumulate for ten years, and at the expiration of that period to his children.

"**Either certainly or contingently.**"—For example, where the property is settled on the deceased for life and then to such of his sons as shall attain twenty-one years.

"**And either originally or by way of substitutive limitation.**"—For example, where the property is settled on the deceased in fee, but if he should die without issue, to another person in fee.

"**At a period ascertainable only by reference to the death.**"

Example:—

Where the property is limited to A., in fee or in tail, but when B., the eldest son of the first Duke of Loamshire, shall become the Duke of Loamshire, to B. in fee. The period of B.'s succession can only be ascertained with reference to the death of the first duke.

(m) The expression "the Commissioners" means the Commissioners of Inland Revenue:

(n) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

"**The Inland Revenue affidavit**" means the affidavit giving particulars of the deceased's estate which is filed with the oath for executors or administrators, when applying for a grant of probate or letters of administration to the deceased's estate.

(o) The expression "prescribed" means prescribed by the Commissioners.

(2) For the purposes of this Part of this Act—

(a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

"**Competent to dispose.**"—See notes on sect. 2 (1) (a).

"**Tenant in tail, whether in possession or not.**"—Estate Duty is not considered to be payable on the death of a tenant in tail who is *not* in possession, such case is thought to be covered by sect. 5 (3).

"**General power.**"—If the power is exerciseable only with the consent of trustees or of any other person, it is not considered to come within this sub-section unless the deceased himself created the power and at the same time reserved some interest in the property, and the deceased would not, it is thought, be deemed competent to dispose, if such consent is necessary, unless he himself created the power as above.

"**Exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself.**"

It is not thought that Estate Duty is payable on the death of a settlor merely because in a settlement made by him he had reserved to himself as trustee a power of sale over the settled property, provided he had retained no other interest in the property or proceeds of sale thereof.

(b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required :

This might be held to apply to gifts *inter vivos* made by the deceased, but where the consent of a third party was essential. For example, numerous partnership deeds contain powers to a partner to nominate (with the consent of the others) a son as a partner, such son taking a share of his father's interest in the capital and goodwill of the business.

(c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

A person is therefore deemed competent to dispose of money which he has power to charge on property whether exercised or not.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

"**The deceased**" means a person dying after the 1st August, 1894. This prevents Estate Duty attaching on the death of the wife who is entitled to dower, or husband who is entitled by the curtesy, when Estate Duty has already been paid on the death of the deceased husband or wife respectively.

It is somewhat doubtful whether this sub-section applies where the deceased owner died before the Finance Act, but it is now conceded that it does.

Example :—

A. died 1892 leaving a husband, B., tenant by the curtesy of her freehold, Blackacre, and a son, C., heir-at-law. C. died 1896, and Estate Duty is paid on the reversionary value of Blackacre. B. dies in 1902, Estate Duty is not again payable on his death because the property is considered as "*settled property*" under sect. 5 (2).

In the above example, if B. had died on or after the 30th April, 1909, the Estate Duty paid on C.'s death would not have prevented Estate Duty again attaching on B.'s death. (See sect. 55 of the 1910 Act.)

Application to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1) The Court of Session shall be substituted for the High Court:

(2) "Sheriff Court" shall be substituted for "County Court":

(3) "Confirmation" shall be substituted for "representation":

(4) The expression "receiver of the property and of the rents and profits thereof" means a judicial factor upon the property:

(5) The expression "Inland Revenue affidavit" means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:

(6) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by sect. 38 of the Act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine:

The first part of sect. 38 of 48 Geo. III., s. 149, is as follows:—

38. All and every person or persons, who, as executor or executors, nearest in kin, creditor or creditors, or otherwise, shall intromit with or enter upon the possession or management of any personal or moveable estate or effects in Scotland, of any person dying after the tenth day of October, one thousand eight hundred and eight, shall, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events, within six calendar months next after having assumed such possession or management, in whole or in part, and before any such person or persons shall be confirmed executor or executors, testamentary or dative, exhibit upon oath or solemn affirmation, in the proper Commissary Court in Scotland (which oath or affirmation any judge of, or commissioner appointed by, such Court is hereby authorised to administer, and which oath or affirmation shall not be chargeable with any stamp duty), a full and true inventory, duly stamped

as required by this Act, of all the personal or moveable estate and effects of the deceased, already recovered or known to be existing, distinguishing what shall be situated in Scotland and what elsewhere, together with any testament or other writing relating to the disposal of such estate and effects, or any part thereof, which the person or persons exhibiting such inventory shall have in his, her, or their custody or power; which said inventory, together with such testament or other writing (if any such there be) shall be recorded in the books of the said Court, without any other expense to the party than the ordinary fees of registration; and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory or additional inventories of the same shall, within two calendar months after the discovery thereof, be in like manner exhibited upon oath or solemn affirmation, by any person or persons intromitting with or assuming the management of, such effects, which additional inventory or inventories shall also be recorded in the manner aforesaid; . . .

(7) Sect. 34 of the Customs and Inland Revenue Act, 1881, shall be substituted for sect. 33 of that Act, and the Acts referred to in such sect. 34 shall extend to an estate of a gross value not exceeding 500*l.*, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the Court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of 2*s.* 6*d.*

Sect. 34 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), is as follows:—

34.—(1.) The Intestates Widows and Children (Scotland) Act, 1875 (38 & 39 Vict. c. 39), and the Small Testate Estates (Scotland) Act, 1876 (39 & 40 Vict. c. 24), as amended by the Sheriff's Court (Scotland) Act, 1876 (39 & 40 Vict. c. 70), shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June, one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under Schedule C. of each of the two first-mentioned Acts, shall not exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence to be paid to the commissary clerk or sheriff clerk.

(2.) In any such case where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the inventory shall be the fixed duty of thirty shillings and no more.

(8) The expression "personal property" means moveable property:

(9) The expression "real property" includes heritable property:

(10) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage:

(11) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person:

(12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act:

(13) The expression "trustee" includes a tutor, curator, and judicial factor:

(14) The expression "settled property" shall not include property held under entail: (See *Lord Advocate* v. *McTaggart Stewart*, p. 28.)

(15) An institute or heir of entail in possession of an entailed estate shall whether *sui juris* or not be deemed for the purposes of this Act to be a person competent to dispose of such estate:

Sect. 23 of the Finance Act, 1896, amends this sub-section as follows:—

23. The Finance Act, 1894, shall be construed as if there were added in sect. 23 thereof, after sub-sect. (15), the following enactment:—

"Provided that for the purposes of sect. 18 of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail or having the consent of any subsequent heir valued and dispensed with."

(16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or

having the consent of such one or more subsequent heirs valued and dispensed with, Settlement Estate Duty as well as Estate Duty shall be paid in respect of such estate, but neither Estate Duty nor Settlement Estate Duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies:

Lord Advocate v. *Stewart and another.**

A testator, James Sprot (who died in 1882), left 100,000*l.* to be applied by his trustees in the purchase of lands, which were to be entailed in accordance with Scotch law, on his nephew, Edward William Sprot, and a series of heirs. Until the purchase should be made and the entail executed, the income or rents, as the case might be, were to be paid to E. W. Sprot, whom failing, to the substitutes of entail.

By a codicil he gave the trustees a discretion to purchase land in England to be entailed according to English law.

In pursuance of these directions, the trustees spent part of the sum in the purchase of the estate of Drygrange, and they conveyed that estate to E. W. Sprot and the substitutes of entail in 1888.

E. W. Sprot died on the 1st February, 1898, at which date there remained unexpended a balance of about 60,000*l.*, which was still held in trust for the purchase of lands in terms of the will.

On the death of E. W. Sprot his son succeeded to Drygrange and to the income of the entailed money.

Estate Duty and Settlement Estate Duty were admittedly payable and were paid on Drygrange. Estate Duty was also

* In the Scotch Courts this case was intituled *Lord Advocate* v. *Sprot's Trustees.*

paid on the 60,000*l.* The Commissioners of Inland Revenue claimed also Settlement Estate Duty thereon.

The Lord Ordinary (Lord Stormonth Darling) upheld this claim.

The First Division of the Court of Session (Lords Balfour, Adam, McLaren, and Kinnear) reversed this decision.

The House of Lords (Lords Halsbury, Macnaghten, Shand, Robertson, Brampton, and Lindley), on the 15th January, 1902, affirmed the decision of the Court of Session, and held that in view of the terms of the codicil the money was not "entailed estate" within the meaning of sect. 23 of the Finance Act, 1894, but was "settled property," and, accordingly, exempt from Settlement Estate Duty. Lords Macnaghten, Brampton, Robertson, and Lindley appear to have thought that if the money had been directed to be laid out in land in Scotland only, to be strictly entailed according to Scottish law, the money would have been "*entailed estate.*"

This decision governed the question of the liability of the sum to Estate Duty, and the Estate Duty thereon was accordingly returned.

(17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate Duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate Duty paid by him as aforesaid:

(18) Where any person who pays Estate Duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be

competent for such person to apply to the Court of Session—

(a) for an order of sale of the property or part of it, and in the event of the Court granting such order, it shall provide for the payment out of the price of the amount of the Estate Duty which has been paid by such person, and the Court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the Court shall seem proper; the Court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested: or

(b) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate Duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the Court shall grant authority to the clerk of Court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or

incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate Duty;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty.

See *In re MacKechnie* (p. 218), authorising a sale under this sub-section.

In re Steuart Menzies.

A person to whom real estate in Scotland passed on a death as a trustee in trust for himself for life, and then for others, applied to the Court for authority to raise the Estate Duty and the expenses of paying the duty, and the costs of the application and of the bond and disposition in security. The Court authorised him to grant a bond and disposition in security to himself, as life tenant, for the duty, but not of the expenses.

The Lord Ordinary drew a distinction between this case, which was for authority to grant a bond under sect. 23 (18) (b) which had to be "for the amount of the duty," and that of *In re MacKechnie*, where there was a sale under sect. 23 (18) (a), which expressly places the surplus proceeds at the disposal of the Court.

The duty is not repayable by a terminable charge, but by a mortgage on the fee. See

Turnbull v. *Turnbull.*

By a settlement *inter vivos* dated 12th June, 1900, G. W. M. Turnbull settled certain real estate in Scotland on himself for life, remainder for his wife, A. A. Turnbull, for life, remainder for his brother, C. F. A. Turnbull, in fee.

The settlor died 18th June, 1907, whereupon Estate Duty (175*l.* 8*s.* 2*d.*) became payable in respect of said real estate, which sum was paid by the said A. A. Turnbull. Mrs. A. A.

Turnbull then presented a petition under sect. 23 (18) of the Finance Act, 1894, for an order upon the fiar (C. F. A. Turnbull) to grant, in favour of herself or her nominee, a bond and disposition in security over the estate for the amount of the duty paid, and 6*l.* 13*s.* or thereabouts in respect of the expenses of settling the said duty.

The fiar lodged answers in which he pleaded that the money should be raised by means of a terminable charge over the estate instead of by a bond and disposition in security, and that in any event the duty was chargeable not on the fee of the estate, but on the life interest to which the petitioner succeeded.

It was held by the Court of Session of the Second Division, on 26th May, 1910, that the petitioner was entitled to receive from the fiar a bond and disposition in security for the amount of duty paid by her.

After the said C. F. A. Turnbull had, in pursuance of the direction of the Court in *Turnbull* v. *Turnbull,* executed a bond and disposition in security for the amount of the Estate Duty and interest thereon, and the expenses of the settlement, the petitioner, Mrs. A. A. Turnbull, moved the Lord Ordinary to order the respondent to pay the expenses of the petition. The Lord Ordinary refused the motion, following *Laurie's case* and *Stewart Menzies.* (See *Re Turnbull (petitioner)* (1910), 2 Sc. L. T. 328.)

An heiress who became entitled in possession to two entailed estates was authorised to charge the total amount of the Estate Duty paid on the two estates without regard to the precise amount exigible from each separate estate, but treating the two estates as one estate. (See *Cullander-Brodie.*)

(19) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand

eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

Part IV.—Income Tax.

Relief in respect of Income Tax under Sched. A., 5 & 6 Vict. c. 35.

35. In respect of the income tax hereby imposed under Schedule A., where the tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect:—

(a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and

(b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

(i.) Where the owner is occupier or assessable as landlord, or where a tenant is occupier and the landlord undertook to bear the cost of repairs, by a sum equal to one-sixth part of that amount; and

(ii.) Where a tenant is occupier and undertook to bear the cost of repairs, by such a sum not exceeding one-sixth part of that amount, as may be necessary to reduce it to the amount of rent payable by him.

(c) As between the owner and a mortgagee of his property, or any person having a charge thereon or entitled to any ground-rent, rent-charge, annuity, or other annual sum payable thereout, the owner's right of deduction under the Income Tax Acts in respect of income tax shall be in no wise prejudiced or affected by the relief afforded by this section.

(d) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth, and in the case of any house or building (except a farmhouse or building included with lands in assessment) is more than one-sixth, below the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this section should not apply.

Short Title.

42. This Act may be cited as the Finance Act, 1894.

SCHEDULES.

FIRST SCHEDULE.

EXISTING DUTIES REFERRED TO.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

2. The stamp duties imposed by sect. 38 of the Customs and Inland Revenue Act. 1881, as amended and extended by sect. 11 of the Customs and Inland Revenue Act, 1889, on the value of personal and moveable property to be included in accounts thereby directed to be delivered.

3. The additional Succession Duties imposed by sect. 21 of the Customs and Inland Revenue Act, 1888.

4. The temporary Estate Duties imposed by sects. 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to Legacy Duty or Succession Duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate Duty has been paid, or under any other disposition under which Estate Duty has been paid.

The exact meaning of paragraph 5 was for some considerable time very doubtful, but the official practice is now to give the very widest possible interpretation in favour of the taxpayer, and on this construction if Estate Duty is paid under ANY title, the 1 per cent. Legacy Duty and 1 or 1½ per cent. Succession Duty are not claimed under any *other* title under which the property may have passed on the *same* death.

[The 1 per cent. Legacy and Succession Duties here referred to must not be confused with the new 1 per cent. Legacy and Succession Duties imposed by sect. 58 (2) of the 1910 Act.]

Examples :—

1. A. (died 1870) devised Blackacre to B. for life (died 1906), remainder to C. in fee. C. died in 1890 and devised it to his son D.

When Estate Duty is paid on B.'s death no Succession Duty is claimed under C.'s will on the property passing to D.

If C. had settled Blackacre on himself for life, with remainder to his son D., the result would be the same.

2. Again, A. (died 1872, will proved 1872) bequeathed 10,000*l.* to his brother B. for life (died 1906), and then to C. (A.'s son) absolutely. C. died in 1896. On B.'s death Estate Duty is payable on the 10,000*l.* as part of C.'s estate. This payment covers the 1 per cent. Legacy Duty under A.'s will that would otherwise have been payable. The result is the same whether C.'s representatives pay on the 10,000*l.* as a reversion immediately after C.'s death or wait until the 10,000*l.* falls in on B.'s death.

3. By settlement of 1872, A. settled 10,000*l.* on himself for life (died 1906), and then on his sons, B., C., and D. B. died 1878 having by will bequeathed his one-third share to his son E. absolutely. B.'s will was proved in 1878, and his reversion in one-third of the said 10,000*l.* was included in the valuation of his estate for Probate Duty, but the Legacy Duty at 1 per cent. was not paid by E.

   C. died 1892 having bequeathed his one-third share to his father A., who proved C.'s will in 1892, and paid Probate Duty on C.'s reversion in one-third of the said 10,000*l.*

   Estate Duty is payable on A.'s death on two-thirds of the said 10,000*l.* as passing on his death under the settlement, and on one-third as A.'s free estate.

   The Estate Duty paid on B.'s share exempts E. from the 1 per cent. Legacy Duty he otherwise would have had to pay. Sect. 41 of the Customs and Inland Revenue Act, 1881, exempts A. from paying Legacy Duty under C.'s will.

4. A. (died 1892) devised Blackacre to his son B. for life (died 1906), remainder to C. (B.'s wife) for life (living), remainder to D. (B.'s son) in fee. D. died in 1895, and Estate Duty was paid on the reversionary value of Blackacre as part of D.'s estate. This payment prevents Estate Duty being again payable under A.'s will on the death of B. in 1906. (See notes to *Commissioners of Inland Revenue* v. *Priestley, In re Studdert.*) Notwithstanding Estate Duty is not payable on B.'s death under A.'s will, this does not make the 1 per cent. Succession Duty on C.'s life interest attach, as was once thought.

See also examples 3 and 5, on pp. 296 and 297.

It may be observed that where no Estate Duty is actually payable because, for instance, the whole value of the property is sub 100*l.* (in which case no rate is fixed; see sect. 17, Finance Act, 1894), but the duty is in fact chargeable, it is the practice to give such property the benefit of the exemption from the duties in the First Schedule to the Finance Act, 1894.

The same benefit is conceded in the case of an annuity not exceeding 25*l.* exempt from Estate Duty under sect. 15 (1), Finance Act, 1894.

This exemption from the duties in the First Schedule to the Finance Act, 1894, where no Estate Duty is actually payable, only extends to duties under the same title as that under which the Estate Duty is chargeable. It does not extend to duties under subsidiary titles nor conversely.

Examples:—

1. A. (died 1872) devised Blackacre on trust for sale and proceeds (realised 90*l.*) to his wife B. for life (died 1912), and then to his son C. absolutely. C. died in 1876 (net estate, say, 3,000*l.*), and bequeathed all his personal estate to his son D. absolutely. No Estate Duty is actually payable (although within the charge in sect. 1 of the Finance Act, 1894) on B.'s death because the total value is sub 100*l.* Therefore, there is no Legacy Duty payable under A.'s will on the proceeds passing to C., but Legacy Duty at 1 per cent. is payable under C.'s will on the proceeds passing to D.
2. Conversely.

   A. (died 1875) bequeathed 500*l.* to his wife B. for life (died 1912), and then to his six children, of whom one, C., died in 1906. Probate of C.'s will was obtained in 1906, but his total estate was sub 100*l.*, and, therefore, no Estate Duty was payable. The death of C. and the inclusion of his share in the Inland Revenue affidavit of his estate does not exempt his share from Legacy Duty under A.'s will.

In each of the above examples, if Estate Duty had been actually paid the 1 per cent. Legacy Duty would not have been payable.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184 ...	The Stamp Act, 1815	Section thirty-eight.
56 Geo. 3, c. 56.....	An Act the title of which begins with the words " An Act to repeal the several stamp duties " and ends with the words " managing the said duties."	Section one hundred and seventeen.
43 Vict. c. 14	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

Sect. 38 of the Stamp Act, 1815 (55 Geo. 3, c. 184), is as follows:—

38. And be it further enacted, that from and after the expiration of three calendar months from the passing of this Act [11th July, 1815], no ecclesiastical Court or person shall grant probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring or receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased.

Sect. 117 of 56 Geo. 3, c. 56, is as follows:—

117. And be it further enacted, That from and after the commencement of this Act [20th June, 1816] no ecclesiastical Court or jurisdiction in Ireland shall grant probate of the will or letters of administration of the estate and effects of any person deceased without first requiring and receiving from the person or persons applying for the probate or letters

of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, in the form contained in the schedule hereunto annexed, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted are under the value of a certain sum, to be specified in such affidavit to the best of the deponent's or affirmant's knowledge, information and belief, and according to the account to be annexed to such affidavit, according to which sum the stamp duty shall be ascertained which shall be then required on such probate or letters of administration, which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased.

Sect. 10 of the Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), is as follows:—

10.—(1.) Together with the affidavit to be required and received from the persons applying for a probate or letters of administration in England, in conformity with section thirty-eight of the Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, there shall be delivered an account of the particulars of the personal estate for or in respect of which the probate or letters of administration is or are to be granted, and of the estimated value of such particulars.

(2.) The account so delivered shall be transmitted to the Commissioners of Inland Revenue, together with the documents mentioned in section ninety-three of the Act passed in the twentieth and twenty-first years of Her Majesty's reign, chapter seventy-seven.

(3.) A like account shall be annexed to the affidavit to be required and received from the person applying for a probate or letters of administration in Ireland, in conformity with section one hundred and seventeen of the Act passed in the fifty-sixth year of the reign of King George the Third, chapter fifty-six, and such account shall be in lieu of, and in substitution for, the account annexed to the form of affidavit set forth in Part III. of the schedule to the said Act.

(4.) Every account to be delivered in pursuance of this section shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury.

Sects. 29 and 32 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), are as follows:—

29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act.

32. If at any time it shall be discovered that the personal estate and effects of the deceased were, at the time of the grant of probate or letters of administration, of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly

stamped for the amount which, with the duty (if any) previously paid on any affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said Commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said Commissioners may, in the circumstances, think proper.

The Commissioners of Inland Revenue, upon the receipt of such affidavit duly stamped as aforesaid, shall cause a certificate to be written by an authorised officer on the probate or letters of administration setting forth the true value of the estate and effects as then ascertained, or, as the case may be, the corrected amount of deduction, and such certificate shall be substituted for, and have the same force and effect as, the certificate of the officer of the Court.

FINANCE ACT, 1896.

[59 & 60 Vict. c. 28.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, to amend the Law relating to Customs and Inland Revenue, and to make provision for the Financial Arrangements of the Year.

[7th August, 1896.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part IV.—Death Duties.

Estate Duty.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence

of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

This section prevents Estate Duty attaching where the life interest enlarged is that of the *settlor*, but apart from this, the construction placed upon sect. 5 (3) of the Act of 1894 by Mr. Justice Vaughan Williams in *Att.-Gen.* v. *Wood* prevents Estate Duty attaching, even in cases where the life interest is not that of the settlor. This section may therefore be regarded as (to a certain extent) declaratory of the law as previously existing.

15.—(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property, is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

This section only applies if the death is on or after the 1st July, 1896. In order that the exemption in this sub-section may apply, it is necessary that five conditions should attach:—

(1) There must be a simple creation of a life interest to the deceased.

(2) This life interest must be enjoyed without any reservation to the disponer.

(3) No other interest must be created by the disposition.

(4) The property must revert to the disponer in his lifetime.

(5) The disponer must receive no benefit by contract or otherwise. (*Inland Revenue* v. *Lyell.*)

Examples:—

1. A. settles Blackacre on B. for life, with remainder to A. in fee; on B.'s death, on or after the 1st July, 1896,

no Estate Duty is payable. If A., in this example, had died in the lifetime of B., say, in 1893, this subsection would not apply, and Estate Duty would be payable on B.'s death; of course, if A. had died after the 1st August, 1894, but before 16th August, 1914, say, in 1895, the Estate Duty payable on A.'s death on Blackacre as part of his estate would prevent any Estate Duty attaching on B.'s death. (See *Commissioners of Inland Revenue* v. *Priestley, Re Studdert*; this is not affected by sect. 55 of the 1910 Act.)

2. A. settles 10,000*l.* to pay himself 100*l.* per annum during the life of B., and subject thereto to B. for life, and then to A. absolutely.

   Estate Duty is not payable on B.'s death; A. had no interest in the surplus income during B.'s life.

3. A. settles 1,000*l.* on himself and B. during their joint lives, and on the death of either on the survivor absolutely. Estate Duty is payable on one-half on the death of B. in A.'s lifetime, because there was some other interest created, viz., the possible interest of B. as survivor.

4. A., by settlement in 1902, settled Blackacre to pay 50*l.* per annum to his father B. for life (died 1910), and then to pay 50*l.* per annum to A.'s mother C. for life (predeceased B.), and then to raise 350*l.* on death of B. for D. (A.'s brother) absolutely, and subject thereto in trust for A. in fee. Estate Duty is payable on B.'s death on the cesser of 50*l.* per annum so far only as is necessary to raise said 350*l.*, the balance is exempt as reverter to the settlor.

5. Under the will of B. N. (died 1868) Blackacre stood settled in trust for J. N. for life, remainder to R. N. in tail. By indenture in 1892 J. N. and R. N. disentailed, and conveyed Blackacre to such uses as they should jointly appoint. By re-settlement of 1893 J. N. and R. N. appointed Blackacre to pay 200*l.* per annum to R. N. during the joint lives of J. N. and R. N., and subject thereto all to J. N. for life (living), remainder to R. N. for life (died 1912), remainder to his first son in tail. It is thought Estate Duty is payable on R. N.'s death on the capital to produce the 200*l.* annuity as passing to J. N. for life, and on his death to others, and that sect. 15 (1) affords no exemption.

The deceased must be the person who enjoyed the income in order to come within the exemption of this sub-section. For instance, if A. settled Blackacre on B. during the life of C. and on C.'s death to revert to A. in fee, there is a claim for Estate Duty on C.'s death on Blackacre reverting to the settlor because C. did not enter into possession of the interest as required by the sub-section.

The "other interest" need not ever take effect, it is sufficient to take the case out of this section if the possible interest is created at the date of the settlement. See

Att.-Gen. v. *Penrhyn and another.*

By a marriage settlement of 1st April, 1850, on the marriage of Rev. C. J. Vaughan to C. M. Stanley, the wife settled certain funds in trust to pay herself 100*l.* per annum, and the residue of the income to her husband during his life (he died 15th October, 1897), and after the decease of either the whole of the income was to be paid to the survivor (in events, the wife) for life, and then to the children of the marriage as therein mentioned (there were none), and in default of children the trust funds were to be held in trust for the wife absolutely.

Held (by Grantham and Phillimore, JJ.) that the 100*l.* per annum and the interests of any possible children were "other interests created by the said disposition," so as to take the case out of sect. 15 (1) of the Finance Act, 1896, and, therefore, Estate Duty was payable on the Rev. C. J. Vaughan's death. Phillimore, JJ., dissented from this view, but as junior judge withdrew.

This case was followed by the Court of Appeal in *Att.-Gen.* v. *Glossop.* (See p. 117.)

There must be no benefit to the disponer by contract or otherwise. See

Inland Revenue v. *Lyell* (*Lord*).

The late John Mudie bequeathed his heritable property (in events) to Leonard Lyell. He bequeathed the residue of his moveable property to trustees for the purpose of, *inter alia*, paying an annuity of 1,000*l.* to L. Lyell's mother, and after providing for payment of the annuity and certain pecuniary legacies, the trustees were directed to employ the residue of the moveable estate in paying off any debts affecting the estates

of Kinnordy and Shielhill. After payment of these debts the trustees were further directed to invest the balance of the moveable estate in the purchase of land or otherwise as the trustees might think best, to be held and possessed by the person succeeding to the heritable property.

John Mudie died on 22nd July, 1876, and the said Leonard Lyell (afterwards Lord Lyell) succeeded to the heritable estate and at the same time became entitled to the residue of the moveable estate.

The estates of Kinnordy and Shielhill were unburdened with debts, and with the view of vesting the residue of the moveable estate in Lord Lyell and in order to admit of the closing of the trust, in 1877 Lord Lyell arranged with his mother and the trustees for the transfer to him of the testator's moveable estate discharged from the annuity, he giving in exchange a bond of annuity in his mother's favour containing (1) a personal obligation to pay her an annuity of like amount, and (2) a disposition of certain lands (part of the testator's heritable property) in security therefor. The annuitant died in 1915, and the Crown claimed Estate Duty on the cesser of her annuity. The claim was resisted on the ground that full consideration was given for the annuity within the meaning of sect. 3 (1) of the Finance Act, 1894, or alternatively, that there was a reverter to the disponer within sect. 15 (1) of the Finance Act, 1896.

Held by the Court of Session, First Division (on 12th December, 1917), that as there was a benefit to Lord Lyell, by contract or otherwise, sect. 15 (1) of the Finance Act, 1896, did not apply and that sect. 3 (1) of the Finance Act, 1894, did not apply, therefore Estate Duty was payable.

Lord Mackenzie said at 55 S. L. R. p. 155: "It is the substance of the transaction, not the form which has to be regarded. . . . It was the same annuity throughout. It may have changed its form but not its substance. The exemption in sect. 3 (1) is in these circumstances inapplicable. The annuity was not granted in virtue of the transaction, for there was no *grantor*. The annuity depended upon the antecedent right."

It may be observed that this sub-section is considered to exempt a *purchaser* of the reversion from the settlor from Estate Duty if the settlor would himself have been exempt, it being thought inequitable that property should be liable to Estate Duty merely because it has been sold.

On the other hand, if the settlor voluntarily assigns or settles his reversion on a third person, so that the property does not revert to the *settlor*, then Estate Duty is payable.

Example :—

A. settled Blackacre on B. for life (died 1897), remainder to A. in fee. A. in 1895 voluntarily conveyed his reversion in Blackacre to C. Estate Duty is payable on B.'s death.

The following case is conveniently noted here as it was withdrawn when reference was made to this section.

Att.-Gen. v. *Hannen.*

John Hannen bequeathed to his wife, Sarah Hannen, an annuity of 300*l.*, and devised and bequeathed the rest of his real and personal estate to his son, the defendant, charging his freehold estate with the payment of legacies and bequests.

On the 22nd June, 1898, John Hannen died, and his will was proved by the defendant. His personal estate was more than sufficient for payment of his debts, legacies, and annuities. Estate Duty was paid on all his property. Mortgage securities for 7,000*l.* were appropriated by the defendant to answer the widow's annuity.

On the 15th May, 1902, Sarah Hannen died.

The Commissioners of Inland Revenue filed an information for Estate Duty on the 7,000*l.* mortgage securities under sects. 2 (1) (b) and 7 (7) of the Finance Act, 1894, so far as they produced the annual sum of 300*l.*, on the ground that there was no *settlement* of property by John Hannen's will and, therefore, sect. 5 (2) could not apply. The case was heard in the King's Bench Division, on 7th March, 1904, before Mr. Justice Channell, who raised the question whether the exemption under sect. 15 of the Finance Act, 1896, applied to the case, as being a disposition of property conferring a life interest to the entire exclusion of the disponer (the residuary legatee), no other interest being created by the disposition. The case was adjourned in order that the point might be considered.

At the adjourned hearing, on 18th April, 1904, the information was, by consent, dismissed with costs. (See, however, p. 25.)

This sub-section is considered to apply whether the property settled is in possession or reversion.

Example :—

A. settled 1,000*l.*, to which he is entitled on the death of B. (living 1907), in trust for C. for life (died 1906), and then for himself A. absolutely. No Estate Duty is payable on C.'s death.

Where a life tenant forfeited his life interest (by a decree of divorce in Scotland) during the life of his wife, this sub-section does not exempt the property from Estate Duty on the death of the wife. See

Inland Revenue v. *Montgomery's Trustees.*

By marriage contract on the marriage, in 1880, of Sir B. Montgomery to Lady Montgomery, the husband's father settled a certain sum, amounting to over 20,000*l.*, in trust for the payment of the income to the husband for life, and then to the wife for life, and then capital in trust for the children of the marriage.

On the 15th February, 1905, the marriage, which had taken place on 26th October, 1880, was dissolved by decree of divorce pronounced by the Court of Session in Scotland, on the ground of the adultery of the husband. According to the law of Scotland, in consequence of the decree, the husband's life rent under the marriage contract was forfeited by him, and the wife became entitled to and received the life rent of the fund. The wife died on the 30th July, 1910, survived by Sir B. Montgomery and two children of the marriage. Upon her death the life rent in favour of Sir B. Montgomery revived.

On the wife's death the Crown claimed Estate Duty under sect. 2 (1) (b) of the Finance Act, 1894, and Succession Duty under sect. 58 (2) of the Finance (1909–10) Act, 1910, on the marriage contract funds passing. On the 27th May, 1913, the Lord Ordinary (Cullen) found that these duties were properly payable.

The defenders reclaimed (appealed), and the First Division [the Lord President (Lord Johnston dissenting) and Lord Guthrie], on the 3rd March, 1914, affirmed the Lord Ordinary's judgment.

The Lord President said (*inter alia*): Lady Montgomery died on 30th July, 1910, and at the date of her death she was in the enjoyment of property which is described in the summons. At her death her interest in that property ceased, and passed to Sir Basil, and Estate Duty therefore became payable under sect. 2 (1) (b) of the Finance Act, 1894, which in terms applies to the case. But the defenders say the claim is excluded by sect. 15 (1) of the Finance Act, 1896. In interpreting this section, can we say that Sir Basil conveyed the life interest of the property to Lady Montgomery, and that at her death it reverted to him as the disponer of the property? It is conceded

that Sir Basil made no such disposition, but it is contended that, as on the 19th February, 1905, his marriage with Lady Montgomery was dissolved by decree of divorce, he must be held to have disponed the property within the meaning of sect. 15 (1). Now the effect of decree of divorce is indisputable according to the law of Scotland. It is admirably stated by the defenders themselves in this case, where they say that "in consequence thereof"—in consequence of the decree of divorce—"Sir Basil's life rent interest in the husband's trust fund was forfeited for the benefit of Lady Montgomery until her death on 30th July, 1910." That, in the defenders' own words, is an accurate statement of the effect, by the law of Scotland, of a decree of divorce in circumstances such as we have here. And if that be so, it cannot, I think, be maintained that it was by any disposition granted by Sir Basil that Lady Montgomery came to the enjoyment of the life interest of this trust fund. It was, I think, by no act or deed of his that that came about, but it was solely by virtue of, and as the direct consequence of, the decree of divorce pronounced in an action in which she was the pursuer and he was the defender, which action, for aught that appears here, he may have resisted to the last.

It was conceded that if Estate Duty was payable, Succession Duty followed.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

This sub-section extends the exemption in sub-sect. 1 to cases where there has been a settlement on two or more persons, either jointly, severally, or in succession, so as to free the settlor from Estate Duty when the property reverts to him.

Example:—

A. settles Blackacre on B. for life (died 1897), remainder to C. for life (died 1898), remainder to A. in fee.

This sub-section clearly prevents Estate Duty attaching on the death of C.

Whether it also prevents Estate Duty attaching on the death of B. is not free from doubt; it was held in *Watson's Trustees* v. *Commissioners of Inland Revenue* (see p. 79), by Sheriff-Substitute Strachan, that it did. It is doubtful whether this

decision is correct, and in practice Estate Duty is claimed on the death of B., and if, when C. dies, it can be then shown that the property does revert to the settlor in his lifetime, the provisions of sub-sects. 1 and 2 will then apply, and the Estate Duty paid at the death of B. will be returned without interest on the principle of *Att.-Gen.* v. *Walker, Re Reversionary Interest Society.*

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

This sub-section was evidently added to prevent sub-sects. 1 and 2 being used as a means of evading duty.

Example:—

A. gives 1,000*l.* to B. B. settles it on A. for life, and then on himself absolutely. On the death of A. sub-sects. 1 and 2 do not apply, and, therefore, Estate Duty is payable.

The result is the same if the life tenant had at any time had an absolute power of appointment over the property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

"**Deceased person**" means a person dying on or after the 1st July, 1896.

"**Real property as defined by sect. 1 of the Succession Duty Act, 1853.**"—The definition in sect. 1 is:—

The term real property shall include all freehold, copyhold, customary, leasehold and other hereditaments and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland and all estates in any such hereditaments.

The husband is entitled (where the marriage took place prior to, and the property was acquired prior to the 1st January, 1883) to the rents of his wife's real estate during their joint lives, and on his death, between the 1st August, 1894, and the 1st July, 1896, a claim for Estate Duty attaches on the property reverting to the wife.

This sub-section was introduced to prevent an obvious hardship, and such a claim will not attach if the death is on or after the 1st July, 1896.

If there is a devise, say, by a testator dying in 1872, of real estate to A. and his wife B. for their joint lives, with remainder to the survivor for life, the death of A. in the lifetime of B. gives rise to a claim of Estate Duty on the whole, even if A.'s death is after the 1st July, 1896, because B. does not become entitled in virtue of her former interest. On the death of B. in A.'s lifetime no claim for Estate Duty would arise because the property would not pass.

16. The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section 2 (1) (d) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

"**Any annuity referred to in sect. 2 (1) (d) of the principal Act,**" viz., any annuity purchased or provided by the deceased either by himself alone or in concert or arrangement with any other person.

"**Option.**"—This can only be exercised at the time of delivering the account, but the unpaid instalments may be paid up at any time.

"**Interest,**" viz., at 3 per cent. per annum, but 4 per cent. per annum on and after the 31st July, 1919. This commences to run as from a year after the death.

17. *Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds:—*

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.

This section only applies to deaths after the 1st July, 1896, and before the 9th April, 1900. (See sect. 17 of the principal Act (p. 268) and the notes there.)

By sect. 18 and the Second Schedule to the Finance Act, 1900, the whole of this section is repealed as respects persons dying on or after the 9th April, 1900.

18.—(1) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

This section is retrospective and applies to *all* death duties whether the death occurred before or after the 1st July, 1896. The result is that the complication of having part of the interest payable at 3 per cent. (see sect. 6 (6) of the principal Act, 1894) and part at 4 per cent. (see sect. 8 (10) of that Act) is now abolished, and simple interest at 3 per cent. per annum only is chargeable.

By sect. 30 of the Finance Act, 1919, 4 per cent. per annum was substituted for 3 per cent. for interest accruing due on or after the 31st July, 1919.

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

The death duties as defined by sect. 13 (3) of the principal Act are set out on p. 231.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

Sect. 8 (11) of the Act of 1894 gave the Commissioners power to remit the interest only after twenty years from the deceased's death, but that sub-section applies whatever the amount involved, whilst this sub-section empowers the Commissioners to remit interest at any time, but only on account of the smallness of the amount.

19.—(1) The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

For full notes on Settlement Estate Duty, see Chapter II.

"**The Settlement Estate Duty.**"—The decision of *Re Webber, Gribble* v. *Webber*, was to the effect that Settlement Estate Duty on settled legacies and shares of residue should be borne by the general residuary estate. This was thought to be inequitable, and this section was passed to correct the supposed injustice, but the Court of Appeal in *Re Maryon-Wilson, Wilson* v. *Maryon-Wilson*, [1900] 1 Ch. 565, held that *Re Webber* had been wrongly decided. The law, therefore, both before and after the Finance Act, 1896, is that property settled by the will of the deceased is to bear its own Settlement Estate Duty.

"**Legacy.**"—This includes legacies contingently settled. (See *Re Duke of St. Albans, Loder* v. *Duke of St. Albans*, [1900] 2 Ch. 873.)

"**Settled**" is defined in sect. 22 (1) (h) and (i) of the Act of 1894.

"**The deceased**" means a person dying on or after the 1st July, 1896, this section not being retrospective. (See *Re Gibbs, Thorne* v. *Gibbs.*)

"**Express provision to the contrary.**"—It was decided in *Re Lewis, Lewis* v. *Smith*, that a direction to pay "all duties payable by law out of my estate" out of residuary estate was not an express provision to the contrary. (But see pp. 242 and 497.)

A direction to pay "testamentary expenses" out of residue was held not to include Settlement Estate Duty. (See *Re King, Travers* v. *Kelly.*)

A direction to pay Estate Duty on the whole of the estate out of residue was held to include Settlement Estate Duty. (See *Re Leveridge, Spain* v. *Lejoindre.*)

A direction to set aside a capital sum to produce a "*clear yearly sum*" was held to be a direction to the contrary. (See *Re Dyet, Morgan* v. *Dyet.*)

In *Re Maryon-Wilson*, [1900] 1 Ch. 565, where a father covenanted with the trustees of his daughter's marriage settlement that his executors should, within six months after his death, pay the trustees 25,000*l.* "without any deduction," it was held these words took the case out of the general rule, and the Settlement Estate Duty thereon had to be paid out of the general residuary estate.

(2) The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

"**Such legacy or property.**"—This sub-section only refers to property settled by the *will* of the deceased.

"**Upon an account,**" viz., Form C-2 in duplicate.

"**Executor.**"—The executor is required to pay the Settlement Estate Duty on all settled legacies and shares of residuary personalty, and Lindley, M. R., in *Re Maryon-Wilson*, [1900] 1 Ch. p. 571, said that Settlement Estate Duty was a charge on the settled fund.

20.—(1) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, *and is settled so as to be enjoyed in kind in succession by different persons*, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind *by a person not competent to dispose of the same*, be exempt from Estate Duty, but if it is sold *or is in the possession of some person who is then competent to dispose of the same*, shall become liable to Estate Duty.

The words printed in italics are repealed by sect. 96 (1) of the 1910 Act, except as respects persons dying before the 30th April, 1909.

By sect. 63 of the 1910 Act it was enacted:—

In the case of any person dying on or after the 30th day of April, 1909, section 20 of the Finance Act, 1896 (which gives an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption from Legacy and Succession Duty, as well as from Estate Duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold, and then only in respect of the last death on which the property passed.

The powers of exemption in this section, as amended by sect. 63 of the 1910 Act, are wider than those in sect. 15 (2) of the 1894 Act.

Sect. 20 applies only to deaths on or after the 1st July, 1896. According to a letter read on the 28th May, 1897 (*Times*, 29th May, 1897), by the Lord Privy Seal in the House of Lords, from the Treasury to the Commissioners of Inland Revenue, the section was intended to apply "not to collections as a whole, but to particular works of art."

"**Any property passing on the death.**"—It need not be the deceased's free estate.

"**A deceased person**" means a person dying on or after the 1st July, 1896.

"**Other things.**"—These words do not include immoveable property, such as freeholds or leaseholds.

"**Treasury.**"—There is no appeal from their decision.

For the purpose of obtaining the consent of the Treasury to the exemption of articles under this section, application should be made to the Secretary of the Treasury, with a list and valuation of the articles desired to be exempted.

"**Such property shall not, on the death of such deceased person, be aggregated with other property.**"—These words do not seem to prevent aggregation of the value of the articles on the next death.

Although this is by no means clear, the result seems to be as follows:—If a millionaire leaves pictures worth 40,000*l.* (which the Treasury shall certify to fall within this section) to his son A. for life, and then to B. absolutely, although the millionaire's other estate pays Estate Duty at 15 per cent., the pictures will pay, if sold after A.'s death, at the rate ascertained by aggregating the same with the aggregable property on A.'s death.

"**But if it is sold** *or is in the possession of some person who is then competent to dispose of the same,* **shall become liable to Estate Duty.**"—The words in italics only apply if the deceased died before the 30th April, 1909.

The sale may be under the Settled Land Act, 1882, or by the tenant for life and remainderman together. The competency to dispose, of the remainderman, must be contemporaneous with his possession in order to make the Estate Duty payable.

If part only of the collection is sold, the rate of Estate Duty leviable on that part is determined by the total value of the collection at the death, not by the value of the part sold.

Example:—

A. (died 1912) bequeathed works of art (valued at 80,000*l.*), which the Treasury certified to be of "national, scientific, historic, or artistic interest," to his son B. absolutely. B. sold ten pictures in 1913 for 12,000*l.* The rate of Estate Duty leviable is 8 per cent., the rate determined by the value of the whole collection at A.'s death, not 5 per cent., the rate applicable to 12,000*l.*

(2) The person selling the same, or for whose benefit the same is sold, *and also the person being in possession and competent to dispose of the same,* shall be accountable for the duty, and shall deliver an account, in

accordance with section eight of the principal Act, in the case of a sale within one month after the sale, *and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose.*

The words printed in italics are repealed by sect. 96 (1) of the 1910 Act, except as respects persons dying before the 30th April, 1909.

"**The person selling the same or for whose benefit the same is sold.**"—The person actually selling is liable for the Estate Duty, and so also is the person benefiting by the sale: this may be either the tenant for life or the reversioner. The sale may have taken place for the sole purpose of raising money for the reversioner. (See *Re Leconfield, Wyndham* v. *Leconfield*, and *Re Lord Swathling, Samuel* v. *Swathling*.)

"**And also the person being in possession and competent to dispose of the same shall be accountable for the duty.**"—If the property is sold, the account must be delivered within one month of the sale, but if the duty is leviable because of a person being both (a) in possession and (b) competent to dispose thereof, the account should be delivered within six months of (a) and (b) happening together, but this only applies to deaths before the 30th April, 1909.

"**An account.**"—This is Form C-1 in duplicate.

"**In accordance with sect. 8 of the principal Act.**"—See notes there.

"**Or if in possession becoming competent to dispose.**"—As, for instance, A. bequeathed heirlooms to B. for life, with remainder to B.'s son C. absolutely. B. is in possession and becomes competent to dispose by purchase of C.'s reversion or by C.'s death intestate, leaving B. his next of kin; in either case the Estate Duty is then payable unless A. died on or after 30th April, 1909.

The following case seems to show that the Estate Duty is not payable out of the general personal estate.

Re Leconfield, Wyndham v. *Leconfield.*

By his will, dated 18th April, 1900, Henry Baron Leconfield, who died in 1901, gave certain settled legacies and declared his

will to be that all Settlement Estate Duty payable on his death under the Finance Act, 1894, or any Act modifying it, as well as any other Estate Duty payable on his death in respect of his estate, should be borne by his general estate in exoneration of any beneficiary under the preceding gifts, and he also directed his trustees should stand possessed of the proceeds of sale of his residuary estate in trust to pay, firstly, so much of the Estate Duty and other death duties (if any), including any interest which, under the Finance Act, 1894, or any statute amending the same, should become payable on his death in respect of property to which he should be entitled as tenant for life under the will of the Earl of Egremont, or a re-settlement of the 7th December, 1897, as the capital moneys, stocks, funds, shares, and securities, which at his death might be subject to such will or re-settlement, should be insufficient to pay; and, secondly, all such Succession Duty as should become payable upon his death in respect of the same property.

Under the said re-settlement the testator was, immediately before his death, tenant for life of heirlooms of great value, as to which the Treasury had certified under sect. 20 of the Finance Act, 1896, that they were of national interest, and which were settled so as to be enjoyed in kind in succession by different persons on the testator's death, and which were therefore exempt from Estate Duty under the provisions of that section till they were sold or in the possession of some person competent to dispose of them. The capital moneys and investments, subject to the settlement, were insufficient to pay the duties.

Some of the timber on the settled estates had been cut by the succeeding tenant for life (he was unimpeachable for waste), who was chargeable under sect. 23 of the Succession Duty Act, 1853, with Succession Duty upon his interest in the net proceeds of sale thereof. Upon a summons taken out by the general trustees of the will for the determination of the question whether, upon the true construction of the will, they were bound to retain in their hands during the lifetime of the present tenant for life, or for any other and what period, a sufficient part of the residuary estate to meet (a) the Estate Duty which might become payable on the exempted heirlooms, and (b) the Succession Duty on the proceeds of the timber,

Held (by Joyce, J.) that they were bound, during the lifetime of the succeeding tenant for life or until further order, to set aside a sufficient sum to pay the Estate Duty on the heirlooms, but that for the Succession Duty on the proceeds of

sale of the timber they were not bound to make any provision. The Court of Appeal (Vaughan Williams, Stirling, and Cozens-Hardy, L. JJ.) reversed the decision of Joyce, J., on both points, and held that the trustees should pay the Succession Duty on the timber out of the residuary estate, but that, by this section, the Estate Duty on the heirlooms did not become payable by reason of the death of the testator, and, therefore, there was no right or duty in the trustees to provide out of the residuary estate for the Estate Duty on the heirlooms.

The following is a similar case under sect. 63 of the Finance (1909–10) Act, 1910.

Re Lord Swathling, Samuel v. *Swathling.*

The testator, by his will dated the 5th August, 1909, bequeathed as heirlooms to devolve with his freehold estates (which were settled by his will) such of his pictures as were then in or about his residence, 12, Kensington Palace Gardens, and other specified works of art. In the bequest the testator's widow was given an option (which she exercised) of having the use and enjoyment of the heirlooms for her life or until re-marriage. It was further provided in the will that any person for the time being entitled to enjoy the heirlooms might, after the expiration of five years from the death of the testator's wife, provided such person was of the age of twenty-five years, sell all or any of the heirlooms without an order of the Court. And the will also provided that all legacies, whether pecuniary or specific, were given free of Legacy, Estate, Settlement Estate, or other duties, and directed that such duties should be borne and paid out of his general personal estate in exoneration of the legacies subject thereto respectively. The heirlooms had been certified by the Treasury to be of national, scientific, historic, or artistic interest within the meaning of the above sections. The testator died in 1911, and a summons was taken out to decide (*inter alia*) whether, upon the true construction of the will and having regard to the provisions of sect. 20 of the Finance Act, 1896, as amended by sect. 63 of the 1910 Act, any and what Estate, Settlement Estate, Legacy, Succession, or other duty becoming payable in respect of the above-mentioned heirlooms settled by the will was payable out of the testator's general personal estate; and whether the persons accountable for such duties upon any sale of such heirlooms made at any time thereafter (however remote)

would be entitled to reimbursement out of the general personal estate of the testator; and whether any and what part of such general personal estate should be set aside by the trustees of the will to meet any future claim for such reimbursement.

Held (by Neville, J., on 21st November, 1912), following *Re Leconfield*, that if and when any Legacy, Estate, or Succession Duty became payable in respect of the heirlooms they were not payable out of the testator's general personal estate; and that even if the heirlooms were sold at a time when the testator's death could be said to be the last death on which they passed, the duties payable would not be duties due at and payable in respect of the testator's death, and, therefore, no part of his general personal estate ought to be set aside to provide for them.

Lord Cozens-Hardy, M. R., in *In re Scott, Scott* v. *Scott*, expressed dissent from this judgment.

See also

In re Scott, Scott v. *Scott.*

A testator, domiciled in England, died in January, 1912, and by his will bequeathed free of Legacy Duty to S. absolutely a valuable collection of works of art and other chattels at his apartments in Paris. In July, 1912, the executors applied to the Treasury under sect. 20 of the Act of 1896 and sect. 63 of the Act of 1910 for a certificate of exemption from duties until sale for such of the French chattels as were objects of national, scientific, historic, or artistic interest. On 2nd June, 1914, the executors assented to the bequest of the French chattels and forthwith delivered them to S., and she immediately on the same day delivered them to a purchaser, to whom she had contracted to sell them in December, 1912. The Treasury certificate specified and declared 80 per cent. in value of the chattels to be within the exemption of the sections. On the question whether S. or the residuary personal estate of the testator was liable to pay the English Estate and Legacy Duties in respect of (1) the chattels comprised in the certificate of exemption, and (2) the chattels not included in that certificate:—

Held by the Court of Appeal (on 13th April, 1916), (1) affirming the decision of Neville, J., on the construction of sects. 20 and 63, that no distinction could be drawn between enjoyment in kind for a moment and for a period of years; that S. had "enjoyed in kind," although only for a most transient period, and was therefore under sect. 20 the person liable to

account for and to pay the Estate Duty in respect of the exempted chattels; (2) reversing the decision of Neville, J., that the direction that the chattels were to be free of Legacy Duty was not limited to duty payable upon the testator's death, but extended to duty payable by S. in the event of the chattels being sold by her; and consequently that the Legacy Duty was payable out of residue; (3) by Neville, J. (the hearing of the appeal upon this point being adjourned), that the Estate and Legacy Duties in respect of the chattels not within the certificate of exemption were payable out of the residuary personal estate (the gift being free of Legacy Duty), for that all the personal estate, wheresoever situate, of a testator domiciled in England passes to his executor "as such" within the meaning of sect. 9, sub-sect. 1, of the Finance Act, 1894, although as to personalty situate abroad he may have to take some proceedings in a foreign tribunal to obtain possession of them.

The Master of the Rolls distinguished this case from *In re Leconfield*, where the executors were directed to pay so much of the duty and other Death Duties which "shall become payable upon or by reason of my death," and pointed out the language of the will (in *In re Scott*) was quite general. He also expressed dissent from the judgment in *In re Lord Swathling*.

It was held by the Court of Appeal in *In re Scull, Scott* v. *Morris*, that moveable property abroad does not pass to the executor "as such," consequently the decision of Neville, J., as to the Estate Duty on the foreign chattels not within the certificate of exemption, must be considered as overruled.

21. Where on the death of a deceased person Estate Duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the Estate Duty to the extent to which it has been paid or is payable in respect of the property on which Estate Duty is payable.

"**A deceased person**," viz., a person dying on or after the 1st July, 1896.

"**Passing under a settlement.**"—Observe the definition of a settlement in sect. 22 (1) (i) of the Finance Act, 1894; therefore, if the property is not comprised in a *settlement*, the section does not apply.

Example:—

A. (who died in 1872) bequeathed 1,000*l.* Consols to B. and C. (his sons) as joint tenants. Legacy Duty was paid on the capital at 1 per cent. On the death of B. in 1897, without severing, half passed to C., and Estate Duty became payable. No allowance can be given in respect of a moiety of the Legacy Duty.

"**By a will or disposition which took effect before the commencement of the principal Act.**"—That is, the testator must have died before the 2nd August, 1894, and in case of a deed, it must have been dated prior to that date.

"**Any duty mentioned in paragraphs 3 to 5 of the First Schedule to the principal Act.**"—These duties are:—

(a) The additional Succession Duties imposed by sect. 21 of the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), of ½ per cent. in cases of lineal issue and ancestors and 1½ per cent. in the cases of others.

(b) The temporary Estate Duties imposed by sects. 5 and 6 of the Customs and Inland Revenue Act, 1889, of 1 per cent. on personal estates and successions over 10,000*l.* in value.

(c) The 1 per cent. Legacy and Succession Duties on legacies and successions to lineal issue and ancestors.

"**Has been paid or is payable.**"—The duty may have been paid by way of commutation, provided it has been commuted on the full capital value. If the duty is payable but has not actually been paid, it must, of course, be paid *before* the allowance can be made.

Examples:—

1. A. (who died in 1885) devised Blackacre to B. for life (died 1899), remainder to C. (lineal issue of A.) in fee. In 1890 B. and C. joined in selling Blackacre, and the Succession Duty to become payable on the death of B. was thereupon commuted and paid, but such duty was calculated on the basis of the value of an annuity for the life of C. The commuted duty cannot be allowed under this section against the Estate Duty

claim on the proceeds of sale on B.'s death. (See *In re Lady Foley* (*Times*, 18th May, 1898, and 42nd Report of the Commissioners of Inland Revenue, p. 176.)

2. If the commuted duty in example 1 had been calculated on the capital value of the proceeds of sale of Blackacre, say 10,000*l.* at 1½ per cent. = 150*l.*, and this sum (less discount, having regard to the age of B. and the fact that the sum was being paid in 1890 instead of on B.'s death) had been paid, then the commuted duty could be allowed under this section. It may be stated that only the actual sum (viz., the discounted value of the 150*l.*) paid and not the full sum of 150*l.* is allowed.

3. A., on the marriage of his daughter B. in 1860, settled 1,000*l.* on himself for life (died in 1883), and then to B. for life (died in 1899), and then to her children. At the death of B. the Succession Duty that arose on the death of A. had not been paid. This duty must first be paid on the capital of the 1,000*l.*, with sixteen years' interest on such duty, and then the Succession Duty (but not the interest) will be allowed against the Estate Duty on B.'s death.

"**Under the same will or disposition.**"—It will be observed that the Estate Duty claim must arise under the *same* disposition as the Succession Duty.

Example:—

B., by his marriage settlement of 1872, settles 1,000*l.* (to which he is entitled on the death of his father A. under settlement of 1852) on himself for life (died 1876), then to his wife C. for life (died 1897), and then to their children.

A. died in 1890, and Succession Duty was paid at 1½ per cent. on the 1,000*l.* under the 1852 settlement. This duty cannot be allowed on the death of C. against the Estate Duty under the 1872 settlement.

Where the deceased was a life tenant of a settled fund and also had an absolute interest expectant on his own death in a share of such fund, the share is considered to pass under the deceased's will or intestacy and not under the settlement. Therefore, in such a case, no allowance falls to be made under this section. (See p. 13 for an example.)

If Succession Duty at 1 per cent. or 1½ per cent. has been paid on the capital value of certain sums under a settlement,

which is subsequently put an end to, and the trust funds transferred to the tenant for life and remainderman, but with an understanding (expressed by the execution of a re-settlement or by parol agreement) that they are to be held on substantially the same trusts, then on the death of the tenant for life an allowance is given under this sub-section in respect of such Succession Duty.

Where the deceased has an absolute power of appointment over property bequeathed to him by the will of a testator dying before the 2nd August, 1894, and Legacy Duty has been paid at 1 per cent. under such will under the provisions of sect. 18 of 36 Geo. 3, c. 52, on the capital value, an allowance may be taken for the Legacy Duty so paid against the Estate Duty payable on such property on the deceased's death.

This only applies if, in default of appointment, the property would have passed away from the deceased, because if, in default of appointment, the property would have passed to the deceased, the power of appointment is superabundant, and the property is considered to be deceased's free unsettled estate.

Example :—

A. (died 1872) bequeathed 1,000*l.* to his daughter B. for life (died 1905), and then to her children (none), in default as B. should absolutely by will appoint (B. appoints by her will to her brother C. absolutely), in default of appointment to B.'s next of kin.

Legacy Duty was paid in 1872 on the capital of the said 1,000*l.*

On B.'s death Estate Duty is payable on the 1,000*l.*, since B. was competent to dispose, and an allowance may be taken against this Estate Duty in respect of the Legacy Duty paid in 1872.

If, in default of appointment, the limitation had been to B. absolutely, no allowance could have been taken.

"**On the capital value.**"—Therefore it is not to be allowed if the duty has been paid only on the value of an annuity for the life of the successor. See

In re Lady Mary Foley.

The facts are as follows :—

Lord Foley settled a sum of money to be invested in land and held in trust for himself for life (died in 1869),

remainder to pay an annuity to his widow, Lady Foley, for life (died 1897), and subject thereto to his first son in tail.

At the request of the son the Commissioners of Inland Revenue commuted the Succession Duty expectantly payable on the cesser of Lady Foley's annuity, the assessment being made on the son's life calculated on his then age, according to Table I. of the Succession Duty Act, 1853, after subtracting an annuity for the like amount for the joint ages of the son and Lady Foley made upon their then ages according to Table II. of that Act.

On the death of Lady Foley the son claimed that from the Estate Duty payable on the cesser of the annuity (which she had continued to enjoy to her death) should be deducted not the actual sum paid for the commuted Succession Duty, but the sum that would have been paid had the property paid Succession Duty when the death occurred. The Divisional Court (Wright and Phillimore, JJ.) held that as the Succession Duty had not been paid on the *capital* value sect. 21 did not apply, and no allowance could be claimed.

In cases similar to the above, where the payment of the Estate Duty would, by force of the provisions of sect. 1 of the Finance Act, 1894, and the First Schedule thereto, have exempted the property from the payment of the Succession Duty, which has in fact been commuted prior to the 2nd August, 1894, application may be made to the Controller of the Estate Duty Office for a return of the commuted duty under sect. 37 of the Succession Duty Act, 1853.

"**As a deduction from the Estate Duty.**"—There is no return of the prior duty, but only an allowance against the Estate Duty; therefore if the prior duty to be allowed exceeds the Estate Duty (as it sometimes does), it simply means no Estate Duty is payable.

"**To the extent to which it has been paid or is payable in respect of the property on which Estate Duty is payable.**"—If the whole of the property pays Estate Duty that had paid the prior duty, then, whether such property has depreciated in value or not, the actual amount of the prior duty will be allowed, but if any part of the original property has been taken out of the settlement, then only a proportionate part of the prior duty (attributable to the property remaining) can be allowed.

An allowance may be taken under this section for any Legacy or Succession Duty paid at 1 or 1½ per cent. on the capital of any accumulated fund liable to Estate Duty, but it will be

observed it is now considered that Estate Duty is not payable on accumulations derived from a fund that has borne Probate Duty, Account Duty, or Estate Duty unless the deceased has been competent to dispose of the same since such payment. (See p. 114.)

The amount of the allowance to be made under this section is fixed by virtue of sect. 15 of 7 Edw. 7, c. 13 (Finance Act, 1907), at the amount which would have been payable on account of the duty if the duty were calculated on the value of the property on which Estate Duty is payable, unless the parties on the first delivery of the account request that the calculation be made as if sect. 15 of the Finance Act, 1907, had not passed.

This method of fixing the allowance is very simple, and the deduction will be 1 per cent., 1½ per cent., or 2½ per cent., as the case may be, on the sum liable to Estate Duty.

It is thought that sect. 15 of 7 Edw. 7, c. 13, can only apply to accounts presented for the first time on or after the 9th August, 1907.

22. There shall be added to sub-section five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

See p. 224 as to this.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with.

See p. 310 as to this section.
This section applies exclusively to Scotland.

24.—(1) Unless the context otherwise requires—

(a) this Part of this Act shall come into operation on the first day of July one thousand eight

hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(b) the expression "deceased person" means a person dying after the commencement of this Part of this Act;

(2) Part I. of the Finance Act, 1894, is in this Act referred to as "the principal Act."

"**Deceased person.**"—The words "*the deceased*" have the same meaning as "deceased person." (See *Re Gibbs, Thorne* v. *Gibbs*, p. 497.)

PART VII.—MISCELLANEOUS.

39. . . . Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

40. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent in the third column of that Schedule mentioned.

41. This Act may be cited as the Finance Act, 1896.

SCHEDULE.

ACTS REPEALED.

PART III.—DEATH DUTIES.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 124.	An Act to amend the laws relating to the Inland Revenue.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict. c. 30.	The Finance Act, 1894.	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the Estate Duty," and in sub-section eight, the words "less income tax." Section eight, sub-section ten. Section seventeen, from "provided that," to the end of the section.

Sect. 9 of the Inland Revenue Act, 1868 (31 & 32 Vict. c. 124), is as follows (the repealed words are printed in *italics*):—

9. Whereas it is expedient to make express provision as to the payment of interest on arrears of Legacy Duty and Succession Duty: Be it enacted, That in any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts now in force, or in respect of any succession under the Succession Duty Act, 1853, is or shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest *at the rate of four pounds per centum per annum; and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as the arrears of duty, and as part thereof:* Provided always, that the acceptance or recovery by the said Commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act.

FINANCE ACT, 1898.

[61 & 62 Vict. c. 10.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provisions for the Financial Arrangements of the Year.

[1st July, 1898.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[As there is no date fixed for the commencement of this Act, it came into operation on the 1st July, 1898, except as to sect. 13.]

Part V.—Estate Duties.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property."

For notes on this section, see under sect. 5 (2) of the Finance Act, 1894. This section is thought to be retrospective.

14. Where in the case of a death occurring after the commencement of this Act Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

"**Commencement of this Act**," viz., deaths on or after the 1st July, 1898.

"**Property contingently settled.**"—This section was passed to meet the apparent severity of a case like *Att.-Gen.* v. *Fairley*, [1897] 1 Q. B. 698, in which it was held that it was sufficient to bring a case within sect. 5 (1) of the Finance Act, 1894, if the property was contingently settled.

Examples:—

1. A., testator (died 1889), bequeathed 1,000*l.* to his wife B. for life (died 1906), and then to his children, who being sons attain twenty-one, and daughters who attain twenty-one or marry, in equal shares, with a direction that each daughter's share should be held in trust for her for life, and then for her husband for life, and then for her children who attain twenty-one equally, in default to such daughter absolutely. On A.'s death his two sons are infants and two daughters married women. Therefore, the daughters' half of the 1,000*l.* is absolutely settled, and the sons' half is contingently settled, since they might die under twenty-one, and Settlement Estate Duty is payable on the whole. When the two sons respectively attain twenty-one the Settlement Estate Duty on their shares is returnable under this section.

   Supposing one of the daughters should afterwards die without leaving a husband or children, the Settlement Estate Duty would now be returnable on her fourth, although such fourth was not contingently but absolutely settled. (See note under "The contingency has not arisen.")

2. If A. (died 1899) bequeathed 1,000*l.* to trustees for his daughter B. for life, and then to her children in equal shares, but the trustees were empowered to raise 100*l.* and pay the same to B. absolutely, the Settlement

Estate Duty on this 100*l.* would be returnable on the 100*l.* being raised.

"**The contingency has not arisen or cannot arise.**"—A very liberal view is now taken of these words, therefore if by reason of the happening of an event provided for by the disposition itself or by virtue of sect. 5 (3) of the Finance Act, 1894, the property or some part thereof cannot or does not pass or cannot be deemed to pass on any subsequent death, the Settlement Estate Duty or an appropriate part thereof is refunded.

"**The said duty paid in respect of such property shall be repaid.**"—The Act does not authorise the return of any interest on the duty, therefore, as the Revenue should have been in possession of the duty from the date when it was originally payable until returnable, it follows that where interest has been paid on Settlement Estate Duty because not paid when originally due, this interest is not returnable.

PART VI.—MISCELLANEOUS.

17. This Act may be cited as the Finance Act, 1898.

FINANCE ACT, 1900.

[63 Vict. c. 7.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provision for the Financial Arrangements of the Year. [9th April, 1900.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[As no date is fixed for the commencement of this Act (except as to certain sections) it came into operation as to deaths on or after the 9th April, 1900, except as to sects. 11 and 14, which are restricted to deaths after certain specified dates.]

Part III.—Death Duties.

11.—(1) In the case of every person dying after the thirty-first day of March, 1900, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act,

be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

By sect. 59 (1) of the 1910 Act, in the case of a person dying on or after the 30th day of April, 1909, this section is to be read as if three years were substituted for twelve months, but such extended period is not to apply to any surrender, assurance, divesting, or disposition made or effected before the 30th day of April, 1908, or made or effected for public or charitable purposes, nor to prejudicially affect the rights of purchasers or mortgagees of property purchased or mortgaged before the 30th April, 1909. (See sect. 64 of the 1910 Act.)

Sect. 11 (1) was passed in consequence of the decision of the Court of Appeal in *Att.-Gen.* v. *De Préville* (see p. 32), which decided that Estate Duty was not payable on property on the death of a life tenant who had surrendered her life interest therein, even within a year of her death, to the person entitled in remainder.

"**In the case of every person dying after the 31st day of March, 1900.**"—This section does not apply to deaths between the 1st August, 1894, and 1st April, 1900.

"**The deceased person or any other person.**"—The section applies whether the deceased person was himself entitled to a life interest or some other person was entitled during the deceased's life.

For example of the latter case, A. (died 1892) devised Blackacre to B. during the life of C. (the deceased), and then to D. in fee.

"**An estate or interest.**"—These words are wide enough to include every possible holding in property, and it is thought that "interest" will embrace (a) an absolute or general power of appointment, and (b) a power of revocation and new appointment.

Example:—

A. settles 1,000*l.* as he should by deed or will appoint, and in default and subject thereto to his wife B. for life, and then to their children equally. A. releases the power of appointment within a year of his death. It is thought Estate Duty is payable on A.'s death.

If the words "estate or interest" in this section do not include an absolute power of appointment, then there is apparently no section in the Finance Act which will make Estate Duty payable on A.'s death under the above circumstances.

"**The Acts amending that Act,**" *i.e.*, the Acts of 1896 and 1898.

"**Be deemed to pass on the death of the deceased,**" viz., notwithstanding there is no actual passing the effect for Estate Duty purposes shall be the same as if it had passed. It will be observed there are no words restricting the property deemed to pass to the benefit accruing or arising by the cesser of an interest, but the effect of sect. 7 (7) of the Finance Act, 1894, would no doubt have this result.

"**Surrendered, assured, divested, or otherwise disposed of.**"—These words cover the different legal methods by which the deceased's interest may be dealt with for the benefit of another, and include the divesting of the deceased's interest by bankruptcy.

"**Whether for value or not.**"—Supposing the remainderman purchases the deceased's life interest within a year of the latter's death, so that there is a merger of the two estates, Estate Duty is still payable on the death of the tenant for life by reason of this section.

"**To or for the benefit of any person entitled to an estate or interest in remainder or reversion.**"—It will be observed that the surrender, &c., must be for the benefit of someone entitled in remainder, and, it may be added, *immediately* entitled in remainder on the cesser of the surrenderer's interest.

Examples :—

1. Blackacre stands settled on A. for life, remainder to B. for life, remainder to C. in fee.

   If A. surrenders his life interest to B. and dies within a year (now three years), Estate Duty is payable on A.'s death by reason of this section.

2. But if A. had conveyed or assured his life interest to C. or any other person than B., then on A.'s death, even more than a year afterwards, Estate Duty is payable because Blackacre does actually pass on A.'s death, and this section has no application.

This section is unnecessary to tax cases where the property does *actually* pass, as in example No. 2, or an interest actually ceases.

Again, suppose the assurance is *not* for the benefit of the remainderman, this section does not apply.

Example :—

Blackacre is settled on A. for life, with remainder to B. in fee. The trustees of the settlement, or A. and B. jointly, sell Blackacre for 10,000*l.*, and the proceeds are divided between A. and B. This division may be effected in three ways:

(a) Actuarially, according to their several interests. In this case it cannot be said that A. assured his life interest for the benefit of the remainderman, therefore Estate Duty is not claimed on A.'s death within a year (now three years) of the sale.

(b) There may be an obviously unequal division from an actuarial view, but A. receives more than the value of his life interest. In this case, likewise, Estate Duty would not be claimed on A.'s death within a year (now three years) of the sale.

(c) The same as the last case, but A. obviously receives a great deal *less* than the value of his life interest, then this assurance of A.'s interest was for the benefit of the remainderman, and Estate Duty would be payable on A.'s death if within a year (now three years) of the sale.

"Unless that surrender, assurance, divesting, or disposition was bonâ fide made or effected twelve months before the death," &c.—If the disposition made by the deceased was for the benefit of the remainderman and was within twelve months

(now three years) of the deceased's death, this section applies, and Estate Duty is payable on his death. It is not necessary to consider in this case whether *bonâ fide* possession and enjoyment of the property was assumed, &c.

But if the surrender or disposition was more than twelve months (now three years) prior to the deceased's death, then it becomes necessary also to consider whether "*bonâ fide* possession and enjoyment of the property was assumed," &c.

Example:—

Blackacre stands settled on A. for life (died 1906), remainder to B. in fee. A. in 1903 surrenders his life estate to B. in consideration of B. paying A. 100*l.* per annum for his life. Estate Duty is payable on the capital value of Blackacre on A.'s death in consequence of this section.

It was thought (but the point was not free from doubt) that although the original surrender by the deceased to remainderman was, say, in consideration of an annuity for the life of the deceased, yet, if that annuity was again surrendered to the remainderman more than a year before the deceased's death, that the case would not fall within this section, and Estate Duty would not be payable. This has been now definitely settled by sect. 59 (3) of the 1910 Act.

If the deceased was tenant for life of several properties under the one settlement and surrenders his life interest to the reversioner in one or more of the properties, but retains his life interest in some of the properties and survives the surrender twelve months (now three years), Estate Duty is payable only on the properties in which the deceased retained his life interest.

If the trusts of a settlement are put an end to and the trust funds transferred into the joint names of the life tenant and the reversioner to the intent that life tenant is to continue to enjoy the income during his life, then Estate Duty will be payable on the whole on his death.

If the intent of such joint investment is that they should be entitled equally to the income during their joint lives and that they shall have all the rights of joint tenants, it is still thought Estate Duty will be properly payable on the whole on the death of the life tenant because he has retained the benefit of possibly succeeding to the whole.

If a life tenant surrendered his life interest to the remainderman in consideration of an annuity charged on all the settled

property, but subsequently and more than three years before his death released part of the property from the charge of the annuity, then on his death Estate Duty will only be payable on the part remaining charged with the annuity.

If a life tenant and remainderman mortgage the settled property within three years of the death of the former, it would seem that if the mortgage is, as a fact, created "for the benefit" of the remainderman, the case falls within the exact words of this subsection, and since (to the extent of the mortgage) the deceased has disposed of his life interest for the benefit of the remainderman, Estate Duty is payable on the whole property without deduction for the mortgage that otherwise would have been deductible in accordance with the decision of *Earl Cowley* v. *Commissioners of Inland Revenue.*

It is conceded that if the tenant for life or owner of an annual charge, on surrendering, assuring, divesting, or otherwise disposing of his estate or interest to or for the benefit of a person entitled to an estate or interest in remainder or reversion in the property, contracted for a benefit *not charged on the property itself*, Estate Duty is not payable on the surrendered property if such surrender, assurance, divesting, or disposition took place *before* the 2nd August, 1894.

This does not apply, however, where there is a substitution of a security, as in *Att.-Gen.* v. *Smith-Marriott*, and the Estate Duty is payable on the substituted property irrespective of the provisions of sect. 11 (1) of the Finance Act, 1900.

There has been a decision of the Scotch Courts on this section (*Lord Advocate* v. *McTaggart Stewart* (2nd issue)). The facts are fully set out on p. 27, and are, shortly, as follows :—

Mrs. McTaggart was heiress of entail in possession of the Ardwell estate, and her daughter, Lady Stewart, was the heir-apparent.

In 1895 Mrs. McTaggart executed a deed propelling the estate to her daughter, Lady Stewart. Mrs. McTaggart continued to reside at Ardwell down to her death, on the 25th September, 1902. Estate Duty was accordingly claimed on Ardwell on the ground that Mrs. McTaggart had not been entirely excluded. The Lord Ordinary gave judgment in favour of the Crown, but on appeal to the First Division his judgment was reversed, and it was held Estate Duty was not payable.

Where a tenant for life of a fund in Court surrenders the life estate to the remainderman and the parties petition for payment out, it is the practice of the Courts to retain in Court for

twelve months (this will now be three years) a sum equal to the largest possible amount of duty. (See *Taylor* v. *Poncia* (1901), W. N. 87; 49 W. R. 596.)

(2) This section shall *inter alia* apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination.

12.—(1) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I. of the Finance Act, 1894) in any property has before the passing of this Act been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I. of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to Estate Duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one half per cent. in excess of the rate at which duty

would have been payable if such settled property had been treated as an estate by itself.

Notes on this section will be found under sect. 4 of the Finance Act, 1894, p. 89.

"**Dying after the passing of this Act**"—viz., on or after the 9th April, 1900.

13.—(1) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

The notes on this section will be found under sect. 17 of the Act of 1894.

"**Dying after the passing of this Act**"—viz., on or after the 9th April, 1900.

(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

By sect. 8 (14) of the Finance Act, 1894, all affidavits, accounts, statements, and forms have to be verified on oath, but by this sub-section any correction *may* be accepted without being verified by oath, although the Commissioners may, of course, still require such verification under oath if for any cause they think it advisable.

14.—(1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval

Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of Estate Duty of the property so passing does not exceed five thousand pounds.

(2) This section shall take effect in the case of any person dying since the eleventh day of October, one thousand eight hundred and ninety-nine.

This section has been amended and extended by the Death Duties (Killed in War) Act, 1914; sect. 46 of the Finance (No. 2), Act, 1915; sect. 29 of the Finance Act, 1917; sect. 44 of the Finance Act, 1918, and sect. 31 of the Finance Act, 1919, in the case of persons killed in the war with Germany, Austria, Turkey, etc.

These amendments are noted under the Death Duties (Killed in War) Act, 1914.

"**Within twelve months before death.**"—Death must occur within twelve months of the wounds being inflicted, the accident having occurred, or the disease having been contracted.

"**Against an enemy.**"—By the Army Act, 1881 (44 & 45 Vict. c. 58), s. 190 (20), "The expression 'enemy' includes all armed mutineers, armed rebels, armed rioters, and pirates."

"**Naval Discipline Act**" is 29 & 30 Vict. c. 109, amended by the Naval Discipline Act, 1884 (47 & 48 Vict. c. 39).

The Army Act, 1881 (44 & 45 Vict. c. 58), was amended by the Army and Air Force (Annual) Act, 1920 (10 Geo. 5, c. 7).

"**The Treasury may if they think fit.**"—It is not obligatory on the Treasury's part.

"**On the recommendation of the Secretary of State or of the Admiralty.**"—These recommendations should be first obtained.

"**The whole or any part of the death duties.**"—But the total amount is not to exceed 150*l.* in any one case.

"**Within the meaning of sub-sect. 3 of sect. 13 of the Finance Act, 1894.**"—This includes any and every kind of death duty.

"**Passing upon the death of the deceased to his widow or lineal descendants.**"—Therefore, if the property passes to other than these, the remission cannot take effect.

"**Total value for the purpose of Estate Duty.**"—If the deceased died between the 11th October, 1899, and 9th April, 1900, this value must be arrived at according to the proviso in sect. 17 of the Finance Act, 1896, and if on or after the 9th April, 1900, by the exact principal value under sect. 13 (1) of the Finance Act, 1900.

Part VI.—General.

18. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

19. This Act may be cited as the Finance Act, 1900.

SCHEDULES.

SECOND SCHEDULE.

Repeals.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 30 ...	The Finance Act, 1894.	Section four, from "or which under a disposition" to "descendant of the deceased," and from "but if any benefit" to the end of the section, as respects persons dying after the passing of this Act.
59 & 60 Vict. c. 28 ...	The Finance Act, 1896.	Section seventeen as respects persons dying after the passing of this Act.

REVENUE ACT, 1903.

[3 Edw. 7, c. 46.]

An Act to make certain amendments of the Law relating to Customs and Inland Revenue, and of the Law relating to the Powers and Duties of the National Debt Commissioners.

[14th August, 1903.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part IV.—Miscellaneous.

14. Where, in the case of a person dying after the commencement of this Act, the fixed duty of thirty shillings or fifty shillings has been deposited or paid under section sixteen of the Finance Act, 1894 (which relates to the Estate Duty on small estates), and it is afterwards found that the gross value of the property on which Estate Duty is payable exceeds three hundred or five hundred pounds, as the case may be, the Commissioners of Inland Revenue, if they are satisfied that there were reasonable grounds for the original estimate of the value of the property, may (notwithstanding anything in section thirty-five of the Customs and Inland Revenue Act, 1881) allow an amount equal to the fixed duty deposited or paid to be deducted from the Estate Duty payable in respect of the property.

Prior to this section, if an estate originally sworn as sub 300*l.* or 500*l.* was afterwards found to exceed such amount, the 30*s.* or 50*s.* duty was forfeited.

This section only applies if the deceased died on or after the 1st day of September, 1903. (See sect. 17 (2).)

17.—(1) [This sub-section does not relate to Estate Duty.]

(2) This Act shall come into operation on the first day of September, 1903, and may be cited as the Revenue Act, 1903.

FINANCE ACT, 1907.

[7 Edw. 7, c. 13.]

An Act to grant certain Duties of Customs and Inland Revenue to alter other Duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the Financial Arrangements of the Year. [9th August, 1907.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part III.—Death Duties.

12. The scales set out in the First Schedule to this Act shall, in the case of persons dying on or after the nineteenth day of April, nineteen hundred and seven, be substituted for the scale of rates of Estate Duty set out in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act):

Provided that where an interest in expectancy (within the meaning of Part I. of the principal Act) in any property has before the nineteenth day of April nineteen hundred and seven been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no

other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

[The rates are again increased by sect. 54 of the 1910 Act, sect. 12 of the Finance Act, 1914, and sect. 29 of the Finance Act, 1919.]

The scale of duty for sums up to 150,000*l.* is not varied, but above that amount there is a gradual increase for estates up to 1,000,000*l.*, which calls for no comment.

Above 1,000,000*l.* a new method of increasing the rate, is introduced, viz., by taking the first million at 10 per cent., and any excess over one million at 10 per cent. plus an additional 1 per cent. for each sum of 500,000*l.* or part thereof, as shown in the scale.

Where several items of settled property, under different settlements, pass on the death of the deceased, in addition to his free estate, each of the different items will have to bear its due share of duty at the lower rate in proportion to its value, and each its due proportion of the higher rate in like manner.

Example:—

A. died 8th June, 1907, leaving 1,000,000*l.* net free estate. Settled property (fully aggregable) to the value of 500,000*l.* also passed on A.'s death.

Then 666,666*l.* 13*s.* 4*d.* of his free estate and 333,333*l.* 6*s.* 8*d.* of the settled property pay Estate Duty at 10 per cent.

333,333*l.* 6*s.* 8*d.* of the free estate and 166,666*l.* 13*s.* 4*d.* of the settled property pay Estate Duty at 11 per cent.

The above is a very simple example, but it can easily be seen that some formidable fractions will result in practice in ascertaining the exact proportions.

The proviso as to the sale or mortgage of an interest in expectancy can only apply to property in a settlement. Where a share only of such property has been sold, it is conceived that duty will be assessed according to the scale in schedule 3 on the whole property as if no sale had taken place, and the proportion of this sum, attributable to the unsold property, can

then be found, and this will be the duty *payable* on the unsold part.

The duty on the share sold will be assessed at the rate that would be payable on the whole settled property under sect. 17 of the Finance Act, 1894.

13. The power of the Commissioners under sub-section (11) of section eight of the principal Act to remit the payment of Estate Duty or interest thereon shall apply to the other duties, which are included in the definition of death duties in sub-section (3) of section thirteen of that Act as well as to Estate Duty.

This power only applies after the expiration of twenty years from the death on which the duty became payable.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for Estate Duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

See notes at sect. 11 (2) of the Finance Act, 1894.

15. The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which Estate Duty is payable shall, instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were calculated on the value of the property on which Estate Duty is payable: Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

This section applies to deaths at any time, but in respect only of an account which has been presented for the first time on or after the 9th August, 1907.

The calculation of the allowance to be made under sect. 21 of the Finance Act, 1896, in complicated cases is a matter of very great difficulty, and in many cases can only be arrived at by way of compromise, but this section makes the assessment a very simple one. The request that the calculation may be made as if this section had not passed, should in strictness be made on the first delivery of the account, but if it is made while the account is under consideration and before the payment of the duty it will be so calculated.

16. In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under sub-section (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.

See notes at sect. 4 of the Finance Act, 1894, on this section, p. 101.

PART VII.—GENERAL.

30.—(1) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) . . . Part III. of this Act shall be construed together with the Finance Act, 1894. . . .

(3) This Act may be cited as the Finance Act, 1907.

SCHEDULES.

FIRST SCHEDULE.

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate							Estate Duty shall be Payable at the Rate per Cent. of
	£					£	
Exceeds	100	and	does	not	exceed	500	One pound.
,,	500	,,	,,			1,000	Two pounds.
,,	1,000	,,	,,			10,000	Three pounds.
,,	10,000	,,	,,			25,000	Four pounds.
,,	25,000	,,	,,			50,000	Four pounds ten shillings.
,,	50,000	,,	,,			75,000	Five pounds.
,,	75,000	,,	,,			100,000	Five pounds ten shillings.
,,	100,000	,,	,,			150,000	Six pounds.
,,	150,000	,,	,,			250,000	Seven pounds.
,,	250,000	,,	,,			500,000	Eight pounds.
,,	500,000	,,	,,			750,000	Nine pounds.
,,	750,000	,,	,,			1,000,000	Ten pounds.
,,	1,000,000	,,	,,			1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
,,	1,500,000	,,	,,			2,000,000	Ten pounds on one million, and twelve pounds on the remainder.
,,	2,000,000	,,	,,			2,500,000	Ten pounds on one million and thirteen pounds on the remainder.
,,	2,500,000	,,	,,			3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
,,	3,000,000	-	-	-	-	-	Ten pounds on one million, and fifteen pounds on the remainder.

SECOND SCHEDULE.

(Relates solely to grants to the Local Taxation accounts.)

THIRD SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 30...	The Finance Act, 1894.	The scale of the rates of Estate Duty in sect. 17, except as respects persons dying before the 19th day of April, 1907.

FINANCE (1909–10) ACT, 1910.

[10 Edw. 7, c. 8.]

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other Financial Provisions.

[29th April, 1910.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.—Duties on Land Values.

Appeals.

33.—(1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an

allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(a) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

This section governs appeals in Estate Duty cases only when the question in dispute is one as to the *value* of any real or leasehold property. (See sect. 60 (3) of the 1910 Act.) Appeals on any other point regarding Estate Duty are governed by sect. 10 of the Finance Act, 1894.

This section does not appear to govern the practice of appeals on the question of the value of property for the purposes of Succession Duty unless such duty falls to be assessed on the capital value under sect. 18 of the Finance Act, 1894.

Notice of appeal must be given within thirty days after the Commissioners have given notice to the appellant of their assessment or determination of value.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the

referee to whom the matter is so referred shall be given in the form provided by rules under this section, and shall, subject to appeal to the Court under this section, be final.

See sect. 34 as to the appointment of the panel of referees The referee to whom the appeal is to be referred is to be selected by the Reference Committee. The decision of the referee is to be in the form contained in the schedule to the rules.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

Parties may appear by solicitors or counsel.

Costs of both parties are in the discretion of the referee.

Any order made a rule of the High Court enables the same to be enforced in like manner as an order of the High Court for payment of costs.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and subsections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred

pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

Any person may appeal, the right of the Commissioners of Inland Revenue being expressly conferred by sect. 7 of the Revenue Act, 1911 (1 Geo. 5, c. 2).

See notes at sect. 10 of the Finance Act, 1894, as to appeals to the Court.

As to the admissibility of oral evidence on an appeal, see *Inland Revenue Commissioners* v. *Holloway's Executors*.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the Council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

34.—(1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland and Ireland respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.

PART III.—DEATH DUTIES.

54. The scale set out in the Second Schedule of this Act shall, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, be substituted for the scale set out in the First Schedule to the Finance Act, 1907, as the scale of rates of Estate Duty, and two per cent. shall be substituted for one per cent. in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of Settlement Estate Duty.

By sect. 64 of this Act the higher rates do not affect a purchaser or mortgagee whose purchase or mortgage was made before the 30th April, 1909. An example will show how sales of reversions affect the rates:—

A. settled 160,000*l.* on himself for life (died 1st August, 1909), and then for his three sons, B., C. (who sold his reversion in 1906 to X.), and D. (who sold his reversion in 1908 to Y.). On A.'s death Estate Duty is payable at the following rates:—

(a) By B. on one-third at 10 per cent. under this section.

(b) By X. on one-third at 6½ per cent. under sect. 17 of the Finance Act, 1894, because the increased rates imposed by sect. 12 of the Finance Act, 1907 (see p. 365), do not apply, X. having purchased before the 19th April, 1907.

(c) By Y. on one-third at 7 per cent., the rate fixed by sect. 12 of the Finance Act, 1907.

The sales by X. and Y. do not affect the rate on B.'s share.

In the case of *Re Briscoe, Royds* v. *Briscoe* (see p. 391), it was held that the increased rates payable under this section were included in a direction in the will (dated before the passing of this Act) of a testator (dying after the 29th April, 1910) that his trustees should hold his residuary personal estate "upon trust by or out of the same to pay all my funeral and testamentary expenses incident to the trusts hereby created, including the Estate Duty and Settlement Estate Duty payable in respect of all my said real estate in the parish of C., and of the several sums hereinafter directed to be held in trust for my daughters and their children."

The 2 per cent. rate of Settlement Estate Duty is considered to come into operation where the deceased died on or since the 30th April, 1909.

This section was repealed by sect. 18 (1) of the Finance Act, 1914, as respects persons dying after the 15th August, 1914.

55. For the purpose of any claim to relief from Estate Duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

It has been shown, at pp. 106 to 108, that by reason of sect. 5 (2) of the Finance Act, 1894, when Estate Duty has been paid on a reversion in settled property, Estate Duty is not again payable under the settlement when the reversion falls into possession, and, similarly, at pp. 286 and 287, that by reason of sect. 21 (1) of the Finance Act, 1894, when Probate Duty has been paid on a reversion in settled property, Estate Duty is not payable under the settlement when the reversion falls into possession.

This section abolishes the above exemptions from Estate Duty (where the life tenant dies on or after the 30th April, 1909) except in cases where the reversioner is also the settlor.

It will be observed this section does not affect the decisions, *Commissioners of Inland Revenue* v. *Priestley, In re Studdert* (see p. 105), and *Att.-Gen.* v. *Dodington* (see p. 285), the reversioner in each of those cases being the settlor.

This section applies whether the reversioner died before, on, or after the 30th April, 1909, but the effect of sect. 64 of this Act must be noted.

Example:—

A., by his marriage settlement of 1862, settled 10,000*l.* on himself for life (died 1892), remainder for his wife B. for life (died 1st November, 1909), and then for his four sons, C., D., E., and F.

(a) C. died intestate in 1884 leaving his father A. his next of kin.

(b) D. died in 1893 and bequeathed his share to his wife H.

(c) E. died in 1899 and bequeathed his share to his wife J.

(d) F. died in May, 1909, and bequeathed his share to his wife K.

Probate Duty was paid on C.'s reversion both on C.'s death in 1884 and A.'s death in 1892. The Probate Duty paid on A.'s death (being the settlor) exempts C.'s share from Estate Duty on B.'s death.

Probate Duty was paid on D.'s death on his reversion, but as he was not the settlor this section prevents the relief given by sect. 21 (1) of the Finance Act, 1894, from applying, and Estate Duty is payable on his share on B.'s death.

Estate Duty was paid on the deaths of E. and F. on their respective reversions, but as the relief given by

sect. 5 (2) of the Finance Act, 1894, does not apply, Estate Duty is again payable on their shares on the death of B., since neither E. nor F. was the settlor.

If in the above examples H. or J. had sold her reversion before the 30th April, 1909, then Estate Duty would not be payable on her share on B.'s death because this section would not apply. (See sect. 64 of this Act.)

It will be observed this section only amends the relief from *Estate* Duty conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894; it does not amend the relief conferred by those sections from the 1 per cent. *Legacy* or *Succession* Duty under the Stamp Act, 1815, and Succession Duty Act, 1853. Those sections do not, however, relieve from the 1 per cent. Legacy and Succession Duties imposed by sect. 58 (2) of the 1910 Act.

Examples:—

1. A. (died in 1879) bequeathed 16,000*l.* out of his personal estate to his wife B. for life (died 1912), remainder to his son C., who died in 1900. The payment of Estate Duty in C.'s estate relieves from the 1 per cent. Legacy Duty under A.'s will by reason of the provisions of sect. 5 (2) of the 1894 Act.
2. A. (died in 1879) devised Blackacre (valued at 26,000*l.*) to his son B. for life (died 1912), remainder to his son C. in fee. C. died in 1900 having devised his real estate to his son D. in fee. Estate Duty is payable on the death of B., in addition to that chargeable in C.'s estate. Succession Duty under sect. 58 (2) of the 1910 Act is payable by D. under C.'s will, as the first succession under C.'s will in respect of Blackacre arose on the death of B.

The relief conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894, is further reduced by sect. 14 of the Finance Act, 1914.

56.—(1) The Commissioners may, if they think fit, on the application of any person liable to pay Estate Duty or Settlement Estate Duty or Succession Duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

This is an entirely new provision, and it only enables, but does not compel, the Commissioners to accept a part of the property in satisfaction of the duty.

An applicant seeking to take advantage of this section should be prepared to make a definite and binding offer of the property available for six months.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of Estate Duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(a) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only: and

(b) If a person whose interest in expectancy in the property so purchased, acquired, or

extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

This section is obviously intended to prevent property escaping Estate Duty by the creation of mortgages in cases like that of *Att.-Gen.* v. *Duke of Richmond.* (See p. 141.)

In that case the House of Lords held that the mortgages created by the late Duke of Richmond for the purpose of acquiring the fee simple of the settled estates from his son and grandson, were good deductions against the value of such estates in the Estate Duty account on the late Duke of Richmond's death, but such mortgages can no longer be allowed if the deceased dies on or after the 30th April, 1909.

This section will apply to many cases quite different in character from that of the *Att.-Gen.* v. *Duke of Richmond.*

Example :—

A. is tenant for life of Blackacre, with remainder to B. in fee. In 1896 A. purchases B.'s remainder in fee simple for 1,000*l.*, which sum he borrows on mortgage of Blackacre from C. A. dies August, 1909, and devises Blackacre, subject to such mortgage, to B. Estate Duty is payable on A.'s death on the capital value of Blackacre without any allowance for the 1,000*l.* mortgage.

If the mortgage created by the deceased is greater than the sum he has paid to the reversioner whose interest in expectancy has been purchased, plus the costs of carrying out the transaction, then the difference only will be allowed as a deduction against the value of the property.

A sum raised for the costs of such a transaction would be included in the words "for the purpose of."

Where the person whose interest in expectancy has been purchased becomes entitled to a part only of the property, then this provision applies proportionately only to his part.

Example:—

A. settled Whiteacre on himself for life, and then for B. in fee. A. purchases B.'s remainder for 1,000*l.*, which he raises on mortgage of Whiteacre. A. dies in September, 1909, having devised Whiteacre to B. and C. equally in fee simple. B. must pay Estate Duty on his half of Whiteacre, without deduction, for his half of the mortgage, but C. may deduct half of the mortgage against his moiety of Whiteacre for the purpose of arriving at the value for Estate Duty.

This section does not apply against a purchaser or mortgagee whose purchase or mortgage was made before the 30th April, 1909. (See sect. 64.)

58.—(1) Any legacy or succession duty which under the Stamp Act, 1815, or the Succession Duty Act, 1853, or any other Act, is payable at the rate of three per cent. shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession.

See sect. 95 of the 1910 Act (p. 576) as to the liability of executors and others who have administered estates prior to the 29th April, 1910, the date of the passing of this Act.

The rates of Legacy Duty under the Stamp Act, 1815, are contained in Part III. of the schedule thereto. The rates of Succession Duty under the Succession Duty Act, 1853, are set out in sect. 10 of that Act.

Sect. 11 of the Succession Duty Act, 1853, provides that a legatee or successor who shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator, or intestate, shall pay at the rate his or her spouse would have paid. This section was, by Treasury minute, extended to all legacies.

The consanguinity of the legatee or successor to the testator, intestate, or predecessor, with the rates payable under the Stamp Act, 1815, or the Succession Duty Act, 1853, and the increased rates payable under this sub-section are as follows:—

Consanguinity of Legatee or Successor.	Former Rate.	Rate under this Sub-section.
Brother or sister and their descendants and their respective spouses	3	5
Brother or sister of the father or mother and their descendants and their respective spouses	5	10
Brother or sister of the grandfather or grandmother and their descendants and their respective spouses	6	
Other relatives and strangers blood...	10	Not altered.

As this sub-section amends the rates imposed by sect. 10 of the Succession Duty Act, 1853, it follows that if the succession is to property which is not chargeable with Estate Duty, the additional 1½ per cent. Succession Duty imposed by sect. 21 (1) of the Customs and Inland Revenue Act, 1888, is chargeable, in addition to the higher rates imposed by this sub-section, since the exemption in sect. 1 and par. 3 of schedule 1 of the Finance Act, 1894, does not apply.

Example:—

A. settled 1,000*l.* on himself for life (died 1912), and then for his brother B. absolutely. A. released his life interest in 1900, and the funds were paid over to B. Succession Duty is assessable at 6½*l.* per cent.

Succession Duty is payable at the higher rates imposed by this sub-section, notwithstanding the deceased's life interest was released prior to the 30th April, 1909, if the duty was not commuted. (See sect. 15 of the Succession Duty Act, 1853, and the last example.)

This sub-section is in no way affected by the proviso and three sub-clauses, (a), (b), and (c), to sub-sect. 2, and, therefore, the higher rates may be payable although the principal value of the property passing on the deceased's death is under 15,000*l.* in value, but it is subject to the provisions of sub-sect. 4.

It must be observed that these increased rates do not affect a purchaser or mortgagee whose purchase or mortgage was made before the 30th April, 1909. (See sect. 64.)

(2) The legacy and succession duty payable at the rate of one per cent. on the amount or value of any legacy or succession under the Stamp Act, 1815, and the Succession Duty Act, 1853, or any other Act, shall

be levied and paid notwithstanding any repeal effected by or anything contained in the principal Act (except sub-section (3) of section sixteen thereof) or any other Act, and the duty shall also be levied and paid in cases where the person taking the legacy or succession is the husband or wife of the testator, intestate, or predecessor as in cases where the person taking the legacy or succession is a lineal ancestor or descendant of the testator, intestate, or predecessor:

Provided that the duty shall not be levied—

(a) Where the principal value of the property passing on the death of the deceased in respect of which Estate Duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed fifteen thousand pounds, whatever may be the value of the legacy or succession; or

(b) Where the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed one thousand pounds, whatever may be the principal value of such property; or

(c) Where the person taking the legacy or succession is the widow or a child under the age of twenty-one years of the testator, intestate, or predecessor, and the amount or value of the legacy or the succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed two thousand pounds, whatever may be the principal value of such property.

This sub-section does not affect a purchaser or mortgagee whose purchase or mortgage was made before the 30th April, 1909. (See sect. 64.)

The Legacy and Succession Duties payable at the rate of 1 per cent. under the Stamp Act, 1815, and Succession Duty Act, 1853, were abolished by sect. 1 of the Finance Act, 1894 (see notes under sect. 1, on p. 14, and under the First Schedule, on pp. 317 to 319), so far as Estate Duty has been paid. This sub-section reimposes such duties, and this "notwithstanding any repeal effected by or anything contained in the principal Act (except sub-sect. 3 of sect. 16 thereof) or any other Act."

The words of this sub-section, "notwithstanding any repeal effected by or anything contained in the principal Act (except sub-sect. 3 of sect. 16 thereof) or any other Act," are very wide, and might be construed to override the exemptions from duty in sects. 14, 18, and 32 of the Succession Duty Act, 1853, and sect. 41 of 44 Vict. c. 12, but it is not the practice to so construe them. Shortly, it may be stated that the duties on legacies and successions under this sub-section are considered to be subject to the same limitations, conditions and exemptions as the duties on legacies and successions under the Legacy Duty Act, 1796 (and amending Acts), and the Succession Duty Act, 1853, are subject to, save that spouses are chargeable with duty under this sub-section. Therefore, since a life interest in articles of plate, furniture, or other things not yielding income is not liable to Legacy Duty (sect. 14 of the Legacy Duty Act, 1796) nor Succession Duty (sect. 32 of the Succession Duty Act, 1853) whilst so enjoyed, it follows such duties are not payable under this sub-section until the articles are actually sold or disposed of.

Where a claim for Succession Duty arises under this sub-section and on the same acquisition a claim for Legacy Duty also emerges, the Legacy Duty only is payable, and this discharges the claim for Succession Duty. (See sect. 18 of the Succession Duty Act, 1853, and *Att.-Gen.* v. *Littledale*, L. R. 5 H. L. 299.)

As a result, the case of *Att.-Gen.* v. *Littledale* applies to Succession Duty under this section.

Examples :—

1. By settlement of 1889 A. settled 16,000*l.* on himself for life (died 8th November, 1909), and then for his son B. absolutely. B. died in 1899, and bequeathed the settled funds to his brother C. absolutely. Estate

Duty at 5 per cent. is payable on A.'s death, in addition to the Estate Duty and Legacy Duty payable under B.'s will, but Succession Duty at 1 per cent. is not payable under the 1889 settlement.

If, in the above example, B. had died in 1893, and Probate Duty (under 44 Vict. c. 12) had been paid on his death on the value of his reversion, Estate Duty at 5 per cent. would still be payable on A.'s death, and Succession Duty at 1 per cent. would be payable. (*Re Haygarth's Trusts*, being a decision on sect. 41 of the Customs and Inland Revenue Act, 1881, affords no relief.)

2. By settlement of 1892 A. settled 20,000*l.* on himself for life (died August, 1910), remainder to B. (stranger) absolutely. B. died January, 1910, and bequeathed said 20,000*l.* (valued at 17,000*l.* on B.'s death) to his son C. absolutely. Legacy Duty is payable under B.'s will at 1 per cent., but this discharges the Succession Duty at 10 per cent. under the 1892 settlement on A.'s death. (See *Att.-Gen.* v. *Littledale.*)

This sub-section is not considered to make cumulative Succession Duties payable on real estate.

Example:—

A. settled Blackacre (value 17,000*l.*) on himself for life (died November, 1909), remainder to his son B. in fee. B. died 1900, and devised Blackacre to his brother C. in fee. Estate Duty is payable under the settlement on A.'s death, as well as Estate Duty and Succession Duty under B.'s will when the reversion falls in, but Succession Duty is not payable under the settlement on the succession to B.

A wife or husband pays Legacy or Succession Duty derived from her or his spouse in the same manner as a lineal ancestor or descendant.

This sub-section is regarded as affecting an amendment of sect. 10 of the Succession Duty Act, 1853, so as to include spouses in the class of persons liable to Succession Duty at the rate of 1 per cent. under sect. 10 of the 1853 Act, but where such a succession is to property which is not chargeable with Estate Duty, the additional $\frac{1}{2}$ per cent. Succession Duty imposed by sect. 21 (1) of the Customs and Inland Revenue Act, 1888, is considered not to be chargeable.

Example:—

A. settled 5,000*l.* on himself for life (died 6th May, 1913), and then for his wife B. absolutely. On 1st May, 1910, A. released his life interest to B., and the funds were paid over to her.

Assuming Estate Duty became payable on A.'s death on property exceeding 15,000*l.* in value, then Succession Duty is payable on the 5,000*l.* on A.'s death at 1*l.* per cent.

It is considered that Succession Duty is not payable under this sub-section in respect of the life interest of a spouse derived from his or her wife or husband if such life interest was released or surrendered prior to the 30th April, 1909.

In order that Legacy or Succession Duty should be payable under this section it is necessary (1) that the principal value of the property passing on the death of the deceased in respect of which Estate Duty is payable [after excluding the property referred to in sect. 58 (2) (a)] should exceed 15,000*l.*; and (2) that the total value of the individual benefit should exceed 1,000*l.*, or if the legatee or successor is a widow or infant child of the testator, intestate, or predecessor, that the total value of the individual benefit should exceed 2,000*l.*

It will be observed that the section does not state that property shall not be liable to Succession Duty because its principal value is under 15,000*l.*, but only because the property in respect of which *Estate Duty is payable* is under 15,000*l.* [after the exclusion of property referred to in sect. 58 (2) (a)]. Therefore, if the total value of the property paying Estate Duty on the death of the deceased is under 15,000*l.*, there can be no question of 1 per cent. Legacy or Succession Duty under this section whatever may be the capital value of the property that would otherwise have been liable to such Legacy or Succession Duty.

Example:—

A. settled 40,000*l.* on himself for life, remainder to his wife B. absolutely. A. surrendered his life interest to B. on 1st May, 1909. A. dies (say) in 1914, and the total property paying Estate Duty on his death is under 15,000*l.* in value. There can be no Succession Duty payable on the 40,000*l.* under this section. If the property paying Estate Duty on A.'s death should be over 15,000*l.*, then such 40,000*l.* would be liable to 1 per cent. Succession Duty (under this section and

sect. 15 of the Succession Duty Act, 1853) as a succession that had been accelerated. It is considered that the additional ½ per cent. under sect. 21 (1) of the Customs and Inland Revenue Act, 1888, would not be chargeable in such a case.

Conversely, if the property in respect of which *Estate Duty is payable* is [after exclusion of the property referred to in sect. 58 (2) (a)] over 15,000*l.*, then Succession Duty may be payable under a settlement in respect of property under 15,000*l.* in value and not liable to Estate Duty.

Example:—

A. settles 3,000*l.* on himself for life, remainder to his wife B. absolutely. A. surrenders his life interest in May, 1909, to B., and dies (say) in 1913, leaving free personal estate valued at 15,100*l.* Succession Duty will be payable on A.'s death on said 3,000*l.* at 1 per cent. as on an accelerated succession.

The "**deceased**" in this section is carefully defined in sub-sect. 3.

The property to be excluded from the valuation for the purpose of arriving at the 15,000*l.* is: (a) Property in which the deceased never had an interest (see notes on p. 85 as to this); (b) property of which the deceased never was competent to dispose and which on his death passes to persons other than the spouse or a lineal ancestor or descendant of the deceased; and (c) property in which the first succession arose on any prior death (even after the 30th April, 1909), this is because of the definition of the word "deceased" in sub-sect. (3).

It follows, therefore, that (1) property provided by the deceased in most cases should not be excluded because the deceased generally has some interest in such property in order to make the provision, the only exceptions are certain policies, &c., as set out on pp. 85 and 86; (2) property provided by someone other than the deceased, but in which the deceased had an interest, (a) if it passes to the family (viz., spouse or lineal ancestor or descendant) of the deceased should not be excluded, and (b) if it passes outside the family of the deceased should be excluded unless the deceased had been at some time competent to dispose; and (3) property provided by someone other than the deceased, but in which the deceased never had an interest, should be excluded.

Having regard to the terms of sect. 9 of the Finance Act, 1912, the value of timber, trees, wood, or underwood on an

estate should not be taken into account in determining whether the 15,000*l.* limit is exceeded.

The relationship of the beneficiary to the deceased for the purposes of this proviso will be (it is thought) the relationship of the actual *living* beneficiary at the time of deceased's death in like manner as for the purposes of sect. 4 of the Finance Act, 1894. (See notes on p. 86.)

The words in sect. 4 of the Finance Act, 1894, are: "passes immediately on the death of the deceased to some *person*," &c., but as it was thought *person* would only apply to a living person, notwithstanding the word "*immediately*," if the beneficiary immediately entitled on the death had predeceased the life tenant and disposed of his reversion to a third person (living at the life tenant's death), the relationship of such third person to the life tenant was taken as governing the aggregation; *à fortiori*, therefore, in this proviso, where the word "immediately" does not occur, would it seem to be necessary to take the relationship of the living beneficiary.

If the 15,000*l.* limit has been exceeded on the death of the deceased after the 29th April, 1909, the Legacy and Succession Duties on future deaths of life tenants under the same will or disposition are chargeable, without reference to the question of there being property over the value of 15,000*l.* on such subsequent death. Conversely, if the proviso (a) affords exemption on the first death indicated in sub-sect. 4, no claim for Legacy or Succession Duty at 1 per cent. is considered to arise under the same will or disposition on any subsequent death.

Examples:—

1. A. died in 1911 leaving free estate valued at 20,000*l.*, and by his will bequeathed his property to his wife B. for life, and then to his son C. absolutely. Legacy Duty is payable on the wife's life interest subject to proviso (c). The wife died in 1913. The property passing on her death liable to Estate Duty was under 15,000*l.* in value. Legacy Duty is payable by C. at 1 per cent.
2. A. (who died in 1911) bequeathed his property (valued at 10,000*l.*) to his wife B. for life, with remainder as she should by deed or will absolutely appoint, in default to his son C. The property liable to Estate Duty on A.'s death did not exceed 15,000*l.* B. died in 1912 without appointing, and the property liable

to Estate Duty on her death exceeded 15,000*l.* in value. No Legacy Duty is considered to be payable under A's will.

Proviso (a) does not operate to defeat a claim for the 1½ per cent. Succession Duty which would arise irrespective of this sub-section.

Example :—

A. in 1872 settled 3,000*l.* on himself for life, remainder to his children. A. released his life interest in 1900 and died in 1912. Succession Duty at 1½ per cent. is payable on A.'s death. This duty is payable under the Succession Duty Act, 1853, and not under sect. 58 (2).

If a deceased person's estate as at the time of his death is not above 15,000*l.* in value, it is considered that an accretion to such estate by virtue of sect. 33 of the Wills Act, 1837, does not cause the 1 per cent. Legacy or Succession Duty to attach either to the original estate or to the accretion, even if the latter itself exceeds 15,000*l.* in value. The accretion had no saleable value at the date of the child's death.

The duty is not to be levied if the total value of the individual benefit does not exceed 1,000*l.*, or where the beneficiary is a widow or infant child of the testator, intestate, or predecessor, if the total value of the individual benefit does not exceed 2,000*l.*

It will be observed an infant grandchild is liable to Succession or Legacy Duty if his succession or legacy is over 1,000*l.* although under 2,000*l.*

The value of every legacy, for the purpose of this sub-section, is the value on which the legacy is strictly liable to duty. In general such value is the value at the date of payment or retainer (sect. 6 of the Legacy Duty Act, 1796), specific legacies being regarded as including dividends received after the death (*Bate* v. *Payne*).

The value of an annuity should be estimated in accordance with sect. 8 of the Legacy Duty Act, 1796, and the tables annexed to the Succession Duty Act, 1853, and it is immaterial that the annuitant may die before actually receiving 1,000*l.*

The value of a legacy to which sect. 11 of the Legacy Duty Act, 1796, applies (such as the income of a fund for the maintenance of an infant legatee until he attains the age of twenty-one) should be ascertained in accordance with that section.

The value of a succession to property in respect of which Estate Duty has been paid and is a charge on such property is the value of the property less the amount of the Estate Duty.

If the beneficiaries take absolutely on the death, very little difficulty will arise in ascertaining whether their respective benefits are over or under 1,000*l.* or 2,000*l.*, as the case may be.

If the beneficiary takes for life, with remainder to his children as he should appoint, and in default equally, greater difficulties arise, and it is thought duty cannot be strictly leviable on the capital unless (1) the value of such life interest is over the necessary 1,000*l.* [or 2,000*l.* if within clause (c)], and (2) there has been an appointment of at least 1,000*l.* [or 2,000*l.* if within clause (c)] to each of the reversioners, because if there has not been such appointment, the share of any reversioner may be reduced (by a subsequent appointment) below the necessary value and so escape duty.

The 1 per cent. duty on personal estate passing to beneficiaries for lives, and then to others (all liable to 1 per cent.), is only payable on the capital when it can be postulated for certain that the value of the legacy $\frac{\text{and}}{\text{or}}$ succession to be taken by each person in the series is of the taxable amount. Otherwise the duty is strictly only payable on the individual legacies or successions as and when they become interests in possession. In the latter case the value for duty is to be taken as at the time the duty becomes chargeable and not as at the death of the deceased.

The value of the benefit for the purpose of this proviso is to be ascertained (it is thought) when such benefit is in possession and not whilst in reversion.

Example :—

A. (who died in July, 1910, leaving 20,000*l.* net) bequeathed 400*l.* to his son B. absolutely, and the residue of his estate to his widow C. for life, and on her death 700*l.* to his said son B., and the residue to his son D. absolutely. Although the 400*l.* and 700*l.* together may only be valued at (say) 900*l.* on A.'s death (the 700*l.* being in reversion), yet, as the 400*l.* and 700*l.* when in possession together exceed 1,000*l.*, Legacy Duty is payable under this section by B. on both sums.

In the above example it is considered that duty on the 400*l.* is not due and interest does not commence to run until B. has received over 1,000*l.*, viz., when the 700*l.* becomes payable.

The remarks as to the value of legacies apply equally "*mutatis mutandis*" to "successions."

A legacy or succession under 1,000*l.* may fall to be taxed under this sub-section if the legatee or successor receives from the same testator or predecessor other legacies *or* successions (the words are not "legacies *and* successions") making the total benefit over 1,000*l.*, notwithstanding that such other legacies or successions do not fall to be taxed hereunder.

Example:—

A. died 1912 leaving free estate valued at 50,000*l.* net. He bequeathed 300*l.* only to his son C. absolutely. A., by his marriage settlement of 1868, settled 6,000*l.* on his wife B. for life (died 1896), remainder to A. for life, remainder to the children of the marriage (C. and D.) in equal shares. As C. receives over 1,000*l.* derived from A., his 300*l.* legacy is chargeable with 1 per cent. Legacy Duty, although his moiety of the 6,000*l.* is not liable to Succession Duty, since the first succession under the settlement was on B.'s death.

If the legatee or successor receives less than 1,000*l.* in value on the death of the deceased, but he has already received a benefit by way of succession or a legacy on a prior death derived from the same predecessor, which together make the benefit to such legatee or successor over 1,000*l.*, it is thought that proviso (b) affords no exemption from duty.

Example:—

A. (died in 1906) bequeathed 600*l.* to his son C. A., by marriage settlement of 1870, settled 4,000*l.* on his wife B. for life (died 1912), remainder in events to his children equally. There were five children, including C. Property over the value of 15,000*l.* liable to Estate Duty also passes on B.'s death. Although C. receives only 800*l.* (less Estate Duty) on B.'s death it is thought Succession Duty at 1 per cent. is payable thereon, since the value of his succession together with his 600*l.* legacy derived from A. does exceed 1,000*l.*

The expression "other legacies or successions" in proviso (b) is considered to mean such legacies or successions as are (or, but for the relationship of the beneficiary, would be) subject to British Legacy or Succession Duty.

Example:—

A testator who died domiciled in New Zealand leaving real estate in England valued at 3,000*l.* net and personal estate in England valued at 30,000*l.* net, devised and bequeathed all his property to his four sons absolutely. The personal estate is exempt from Legacy Duty because of the domicile of the testator, and is therefore to be disregarded for the purpose of proviso (b). The succession of each of the four sons being under 1,000*l.* is exempt from Succession Duty.

If an infant takes a legacy or succession under 2,000*l.* in value, but on attaining twenty-one receives any other benefit derived from the same person which, added to what vested in him during minority, makes up in the aggregate an amount which exceeds 2,000*l.*, the exemption under proviso (c) ceases, and duty is payable on the aggregate benefit.

A direction in the will, made before the passing of this Act, of a testator dying after such passing to his trustees to pay the "testamentary expenses incident to the trusts" out of his residuary personal estates includes the 1 per cent. duties under this sub-section. See

Re Briscoe, Royds v. *Briscoe.*

A testator, who died on the 2nd July, 1909, by his will dated the 10th March, 1908, after appointing executors and trustees and bequeathing small pecuniary legacies, devised all his real estate in the parish of C. to his daughter, Mrs. G., for her life, with remainder to her children as therein set out, and devised the residue of his real estate to his son. The testator then bequeathed all the residue of his personal estate to his trustees "upon trust by or out of the same to pay all my funeral and testamentary expenses incident to the trusts hereby created, including the Estate Duty and Settlement Estate Duty payable in respect of all my said real estate in the parish of C. and of the several sums hereinafter directed to be held in trust for my daughters and their children." The testator then settled various sums out of his residuary personalty on his five daughters and their children as therein set out, and gave the remainder of his residuary personalty to his son. A summons was taken out asking (1) whether the Estate Duty and Settlement Estate Duty imposed by sect. 54 of the Finance Act, 1910, payable in respect of the real estate in the parish of C. and the settled legacies were payable out of the testator's residuary personal

estate under the above set out clause of his will; and (2) whether the Succession Duty and Legacy Duty of 1 per cent. payable under sect. 58 (2) of the said Act in respect of the said real estate and the settled legacies were also payable out of the testator's residuary personal estate. It was admitted that the increased duties under sect. 54 were payable out of the residuary personalty, but it was contended that the new duties imposed by sect. 58 (2) were not. *Courtoy* v. *Vincent*, Turn. & R. 433; *Gosden* v. *Dotterill*, 1 M. & K. 56; and *Louch* v. *Peters*, 1 M. & K. 489, were referred to as showing that "expenses" covers duties.

Held (by Eve, J., on the 17th November, 1910) that the new duties were payable out of the residuary personalty as well as the increased duties. His Lordship said the above authorities showed that *primâ facie* a direction to pay expenses means that the beneficiary is to take free from any existing duty, and that he was of opinion that the new duties were "an expense incident to the trusts," as they were a necessary preliminary to the establishment of the trusts themselves; nor did he think that "expenses incident to the trusts" were cut down by the succeeding words "including Estate Duty and Settlement Estate Duty" to those duties only.

The words "expenses of and incidental to the execution of the last preceding trust" did not receive the same construction in *Re Charles Morrison (deceased)*, *Morrison* v. *Morrison* (p. 240), but probably the will in that case was considered to negative such a construction being put on them.

A direction to pay "testamentary expenses including death duties" was held not to include Legacy and Succession Duties payable by a husband under this sub-section. (See *Re Massey, Ram* v. *Massey*, p. 204.)

(3) In this section, the expression "deceased" means, in the case of a legacy, the testator (including a person making a donation *mortis causâ*) or intestate, and, in the case of a succession arising through devolution by law, the person on whose death the succession arises, and, in the case of a succession arising under a disposition, the person on whose death the first succession thereunder arises; and the expression "legacy" includes residue and share of residue.

Before Legacy or Succession Duty at 1 per cent. can be payable under this section on the death of a person answering

to the description of "*deceased*," as defined in this sub-section, there must be property passing on his death liable to Estate Duty over the value of 15,000*l.* [after making the necessary exclusions in proviso (a)], but it will be observed that every person *dying after* the 30th April, 1909, does not come within the definition of the "*deceased*" in this sub-section.

Examples :—

1. A. (died August, 1909) left 30,000*l.*, and bequeathed 10,000*l.* to his son B. for life (died November, 1909), and then to his grandson C. B. does not come within the definition of the "*deceased*," therefore the 15,000*l.*, proviso (a), does not apply to his death.
2. A. died intestate May, 1909, leaving Blackacre, valued at 20,000*l.*, in which his widow B. is entitled to dower, and a son and heir-at-law C. B. died October, 1909, without any free estate, and since C.'s succession on B.'s death in respect of one-third of Blackacre arises by devolution of law, B. comes under the definition "*deceased*"; therefore proviso (a) applies, and there can be no Succession Duty on B.'s death, one-third of Blackacre being under 15,000*l.* in value. If the intestate died before the 30th April, 1909, see foot of p. 398.

With reference to claims for Legacy Duty, the testator or intestate is the "*deceased*" for the purpose of this section, and claims for duty hereunder can only arise if the testator or intestate dies on or after the 30th April, 1909. (See sub-sect. 4.)

In the case of Succession Duty arising through *devolution of law*, the person on whose death the succession arises is the "*deceased*" for the purpose of this section, and such person must have died on or after the 30th April, 1909.

As to cesser of curtesy and dower, see example 2 above, and notes on p. 398.

Claims under this section for Succession Duty under a *disposition* only arise if the first succession under the disposition arose on or after the 30th April, 1909.

A succession is considered to "*arise*" not when the right to it is created, but when the successor becomes entitled to it in beneficial succession. (See *Hamilton* v. *Lord Advocate*, p. 399.)

First Succession.

In cases where a disponer settles by the same instrument one property on certain trusts and another property on

different trusts, they should be regarded as different dispositions for the purpose of ascertaining the first succession.

Example:—

A. settled 10,000*l.* Consols in trust for his son B. for life (died 1892), and then for his children equally, and by the same settlement settled 5,000*l.* Consols in trust for his son D. for life (died 1912), and then for his children equally.

In considering the claims on the death of D. it is thought the trusts of the 5,000*l.* Consols only need be considered, therefore the first succession is on the death of D.

In like manner, if the disponer settles by the same instrument property in possession and property in expectancy, the settlement of the property in possession should be regarded as one disposition and the settlement of the property in expectancy as a separate disposition.

I. If the disposition is made by *a will*, the first succession thereunder arises—

(A) In respect of real estate *in possession* (1) on the death of the testator if he died on or after the 19th May, 1853 (see sect. 54 of the Succession Duty Act, 1853); (2) on the death of the first tenant for life under the will if the testator died before the 19th May, 1853, because the death of a testator who died prior to that date does not give rise to a "succession" within the meaning of the Succession Duty Act, 1853.

(B) In respect of real estate *in remainder* on the death, on or after the 19th May, 1853, of the person whose death lets in the beneficial succession whenever the testator died.

Example:—

A. settled, by deed in 1862, Blackacre (valued at 18,000*l.*) on himself for life (died 1912), remainder to his son B. in fee. B. (died in 1900) devised Blackacre to his son C. in fee. The first succession under B.'s will is on the death of A., therefore C. is liable to pay 1 per cent. Succession Duty on Blackacre under B.'s will.

In cases where a claim for Succession Duty on personal estate arises under the doctrine of *Att.-Gen.* v. *Campbell*, L. R. 5 H. L. 524, under the will of a testator who has died domiciled abroad, the first succession arises on the first death which gives rise to such a claim.

II. If the disposition is made by an instrument *other than a will*, the first succession thereunder arises—

(A) In respect of property *in possession* on the death of the first tenant for life on or after the 19th May, 1853. (See *Hamilton* v. *Lord Advocate*, p. 399.)

(B) In respect of an interest *in expectancy*. In this case no general rule can be laid down, but regard must be had to the circumstances of each case.

Firstly. Where there has been a simple settlement by a reversioner of his reversion and the original tenant for life, on whose death the reversion is expectant, takes no new life interest under the settlement, the question: When does the "first succession" under the reversioner's settlement arise? is one of some complexity.

It depends upon the construction to be placed on the words in the following sections of the Succession Duty Act, 1853:—

(a) Sect. 1: "The term 'succession' shall denote any property chargeable with duty under this Act."

(b) Sect. 2: "Every . . . disposition of property, *by reason whereof* any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act . . . shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition . . . a 'succession,'" and

(c) Sect. 12: "Where any person shall take a succession under a disposition made by himself," &c.

A simple example will assist in explaining the difficulty.

A. by settlement of 1872 settled (a) 20,000*l.* and (b) Blackacre on himself for life (died 1892), and then in equal shares for his sons B. and C. absolutely and in fee.

B. by settlement of 1890 settled his reversion to a moiety of the 20,000*l.* and of Blackacre on himself for life (died 1920), remainder for his son D. absolutely and in fee.

Having regard to the judgment of the House of Lords in *Hamilton* v. *Inland Revenue*, a "succession" clearly arose on the death of A.

The succession to C.'s moiety must have arisen *under* the disposition of 1872 because there was no further settlement made by C.

The question then is, Does the settlement by B. of his moiety make the succession to such moiety arise *under* the settlement of 1890?

Did B. become beneficially entitled to his moiety of the 20,000*l*. and Blackacre on A.'s death "by reason of" the 1872 disposition as required by sect. 2 of the Succession Duty Act, 1853?

The answer would seem to be that he did. B. did not become entitled "by reason of" the 1890 settlement; if that settlement had never been executed, he would still have been entitled.

Can it also be said that B. took on A.'s death "a succession under a disposition" (the 1890 settlement) made by himself within the meaning of sect. 12 of the Succession Duty Act?

The cases decided on sect. 12 (*Att.-Gen.* v. *Sibthorp*, *Lord Braybrooke* v. *Att.-Gen.*, and *Att.-Gen.* v. *Floyer*) were all cases where a tenant for life and a tenant in tail in remainder barred the entail and re-settled, giving the original life tenant a new life interest under the re-settlement, and for some time it was thought that sect. 12 was intended primarily to bring this class of case within the charge of the Succession Duty and that it did not apply in the example given. Moreover, it must be observed that Lord Herschell in *Wolverton* (*Baron*) v. *Att.-Gen.*, [1898] A. C. 535, said (p. 548): "I am unable to find in the Act any warrant for the view that a succession once created can by the act of the successor cease to exist and another succession be substituted for it."

Although (at p. 556) commenting on the case of *Att.-Gen.* v. *Cecil*, where also there was a barring of the entail and a re-settling to the joint appointment of the tenant for life and remainderman and subject thereto to the uses of the earlier settlement, Lord Herschell said: "By the disentailing deed the estate of the tenant in tail became enlarged to an estate in fee. If he had survived his father he would have taken within the meaning of sect. 12 under a disposition made by himself and not under the original settlement."

The succession which arose on A.'s death in B.'s moiety may therefore be considered to have arisen under the 1872 disposition, so that the first succession under the 1890 disposition arose on B.'s death.

On the other hand, if the succession on A.'s death was taken by B under the 1890 disposition, it is possible to consider this as the first succession under the 1890 disposition and as arising thereunder. Neither view is entirely free from doubt.

Secondly. In cases where a tenant for life and a tenant in tail in remainder of real estate bar the entail and re-settle, and the life interest of the original tenant for life is restored by the re-settlement, then—

(a) If the original tenant for life whose life interest is restored *predeceases* the original tenant in tail, the succession which arises on the death of the original tenant for life is—

(1) If the *successor* is the *original tenant in tail* considered, by reason of sect. 12 of the Succession Duty Act, 1853, to be under the re-settlement.

Example:—

A. being tenant for life and B. (his son) tenant in tail of Blackacre (valued at 16,000*l.*) under the will of their ancestor X. (who died in 1880) bar the entail and re-settle, by re-settlement in 1896, on A. for life (died 1911), remainder to B. for life (living), remainder to B.'s first son in tail. The succession on the death of A. is under the re-settlement of 1896, and as this is the first succession under that deed, B. is liable under this sub-section to Succession Duty at 1 per cent. on his life interest as derived from X., the predecessor.

(2) If the *successor* is *a third party*, considered to be under the old title. (See *Duke of Northumberland* v. *Att.-Gen.*, [1905] A. C. 406; *Lord Wolverton* v. *Att.-Gen.*, [1898] A. C. 535.)

Example:—

Facts as in last example, but A. and B. re-settle in 1896 on A. for life (died 1911), remainder to C. (B.'s brother) for life (living), remainder to C.'s first son in tail. The succession on the death of A. is under X.'s will, and C. is merely an alienee of B.'s succession, consequently no Succession Duty is payable on the death of A., since the first succession under X.'s will arose on X.'s death.

The distinction between the cases (1) and (2) is based upon the language of sects. 12 and 15 respectively of the Succession Duty Act, 1853.

(b) If, however, the original tenant for life *survives* the original tenant in tail, the succession to which the death of the original tenant for life gives rise is under the re-settlement.

Example:—

A. being tenant for life and B. (his son) tenant in tail of Blackacre (valued at 17,000*l.*) under the will of their ancestor X. (died 1882) bar the entail and re-settle,

by re-settlement in 1896, on A. for life (died 1912), remainder to B. for life (died 1900), remainder to B.'s first son C. in tail. The succession under the will of X. is displaced by the death of B. in A.'s lifetime and a new succession is created under the re-settlement of 1896, and the first succession thereunder is on the death of A.; therefore Succession Duty at 1 per cent. is payable by C.

A succession to property on a death where the successor is his own predecessor, and so no Succession Duty is payable, cannot (it is thought, having regard to the decision of *Hamilton* v. *Lord Advocate*) be a first succession under this sub-section.

Example:—

A. settled Blackacre on B. for life (died 1892), remainder to A. for life (died 1912), remainder to his son C. in fee. The first succession is on the death of A. because the succession on the death of B. was not dutiable under the Succession Duty Act, 1853.

Where a person has an absolute power of appointment taking effect on a death on or after the 19th May, 1853, and exercises it by will, the succession on his death is under the will and is the first succession. (See sect. 4 of the Succession Duty Act, 1853.)

Where a testator, who died after the 19th May, 1853, devises property to two or more persons as joint tenants, on the death of any the survivors derive their succession from the old testator (see sect. 3 of the Succession Duty Act, 1853), therefore on the death of a joint tenant who derived his title under the will of a testator who died before the 30th April, 1909, the interest accruing to the surviving joint tenant is considered to be a succession under the testator's will and therefore not the first succession thereunder.

Where a husband has a curtesy interest in the real estate of his late wife, who died prior to the 30th April, 1909, the first succession in the property is considered as having arisen on her death. The succession on the husband's death after the 30th April, 1909, having regard to the provisions of sect. 22 (3) of the Finance Act, 1894, is then treated as having arisen under the wife's "*disposition*" and not "through devolution by law."

This would appear to be a concession, and therefore does not affect example 2, on p. 363.

(4) This section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given or the intestate on whose death the legacy duty is payable, dies on or after the thirtieth day of April nineteen hundred and nine, and, in the case of a succession arising through devolution by law, only where the succession arises on or after that date, and, in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date.

"**In the case of Legacy Duty.**"—It is considered that these words include cases where the legacy would be liable to pay Succession Duty under sect. 21 of the Customs and Inland Revenue Act, 1888.

Example:—

A. (died 1891) devised Blackacre to B. for life (died 1912), remainder to C. C. died 1901, and devised Blackacre on trust to sell and proceeds to D. (C.'s brother) absolutely.

The proceeds of sale of Blackacre are liable to Succession Duty on B.'s death, but at 3 per cent., and not 5 per cent., under sect. 58 (1).

It will be observed in order that *Legacy Duty* may be payable under this section the testator or intestate must die on or after the 30th April, 1909, but in order that Succession Duty may be payable in the case of a succession arising through devolution by law, it is only necessary that such *succession* should arise on or after that date.

As to the cesser of curtesy and dower interests, see, however, example 2, on p. 393, and notes on p. 398.

"**Succession arising.**"—The meaning of these words is such a taking of property as makes the property subject to duty under the Succession Duty Act, 1853. See

Hamilton v. *Lord Advocate.*

By deed of entail dated 1823 A. disponed the estates of Pinmore, in the County of Ayr, on his own death (in events which happened) to his cousin B. and the heirs male of his body, whom failing, to the heirs female of his body. A. died in

1829 and was succeeded by B., who died in 1838 and was succeeded by his eldest and only son, C. C. died in August, 1910, leaving no heir male of his body, and he was succeeded by D. (the eldest daughter of C. and a descendant of a brother of the father of A.).

The Crown claimed that D. derived her succession from the original disponer A., and that as this succession was the "first succession" within the meaning of sect. 58 (4) of the Finance (1909–10) Act, 1910, the Succession Duty was chargeable at the rate of 10 per cent. (see sect. 58 (1) of the Finance (1909–10) Act, 1910). The Commissioners contended that the word "succession" in sect. 58 (4) had the same meaning as it had in sects. 1 and 2 of the Succession Duty Act, 1853, and that it referred only to deaths occurring after the commencement of the latter Act.

Held by the Lord Ordinary (Lord Cullen) (on the 24th January, 1917) that D. derived her succession from A. as predecessor and that Succession Duty was chargeable at the rate of 10 per cent.

The Lord Ordinary said (55 S. L. R. p. 163): "Now putting sect. 1 and sect. 2 of the Act of 1853 together and taking, as I think it must be taken, that the language of sect. 58 of the Finance (1909–10) Act, 1910, raising the scale of Succession Duty in certain cases, falls to be read in harmony with the language used in the original Act of 1853, to which it bears relation, I am unable to resist the conclusion that when sect. 58 (4) speaks of a 'succession arising' it means the same thing as a succession conferred and taken within the application of the language used in the Act of 1853—that is to say, that it means to refer to the occurrence of such a taking of property as makes the property subject to duty under the Act of 1853."

The First Division of the Court of Session in Scotland (the Lord President, Lord Johnston, and Lord Mackenzie) agreed with the Lord Ordinary on both points. The House of Lords (Viscounts Haldane, Finlay, and Cave, Lords Dunedin and Shaw of Dunfermline) on 21st July, 1919, affirmed the decision of the First Division.

Viscount Finlay said: "I think that the term 'succession' under sub-sect. 4 of sect. 58 of the Act of 1910 must be read in the same sense as referring to a succession dutiable under the Act of 1853. As any prior succession took place before the Act of 1853 became operative, it was not the first succession within the meaning of sub-sect. 4."

In the case of a succession under a disposition, the first

succession must arise thereunder on or after the 30th April, 1909. (See sub-sect. 3 for the meaning of the "first succession.")

59.—(1) In the case of a person dying on or after the thirtieth day of April nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift *inter vivos* must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting, or disposition may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (a) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (c) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months:

Provided that this section shall not apply to any gift *inter vivos*, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April nineteen hundred and eight, or made or effected for public or charitable purposes.

The effect of this sub-section is: (1) By the amendment of paragraph (a) of sub-sect. 2 of sect. 38 of the Customs and Inland Revenue Act, 1881, &c. (see pp. 35 and 37), to make gifts *inter vivos* (except gifts for public or charitable purposes and gifts made before the 30th April, 1908) within three years of the death of the donor liable to Estate Duty on his death where such death is on or after the 30th April, 1909. Gifts for public or charitable purposes are still liable to Estate Duty if made within twelve months of the donor's death.

(2) By the amendment of sub-sect. 3 of sect. 2 of the principal Act (see p. 75), property will not escape Estate Duty

by reason of the deceased within three years of his death declaring himself trustee for another except where such trust is for a public or charitable purpose.

(3) By the amendment of sect. 11 of the Finance Act, 1900 (see p. 353), all property in which the deceased or any other person had an estate or interest limited to cease on the death of the deceased shall be deemed to pass on the death of the deceased, notwithstanding that such estate or interest has been surrendered and unless such surrender, &c., was *bonâ fide* made or effected three years before the death of the deceased, and to his entire exclusion, &c., as in sect. 11 of the Finance Act, 1900.

This amendment does not apply to surrenders, &c., made before the 30th April, 1908, nor the surrenders, &c., made for public or charitable purposes, but property will not escape Estate Duty although surrendered, &c., for such public or charitable purposes if the surrender, &c., is within a year of the deceased's death.

The liability to duty of a *donatio mortis causâ* is not affected by this sub-section. The proviso in this sub-section is considered to apply only to this sub-section and not also to sub-sect. 2.

Observe that by sect. 64 a purchaser or mortgagee whose purchase or mortgage was made before the 30th April, 1909, is not to be affected by this section.

(2) So much of paragraph (c) of sub-section (1) of section two of the principal Act and this section as makes gifts *inter vivos* property which is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

The following gifts *inter vivos* are therefore no longer liable to Estate Duty whether made within one year or three years of the donor's death :—

(1) Gifts made in consideration of marriage. The relief afforded by this sub-section to gifts made in consideration of

marriage is considered to be restricted to gifts which would be taxable under paragraph (a) of sub-sect. 2 of sect. 38 of the Customs and Inland Revenue Act, 1881, as amended by sect. 11 of the Customs and Inland Revenue Act, 1889, and applied by sect. 2 (1) (c) of the Finance Act, 1894.

(2) Gifts which are proved to the satisfaction of the Commissioners to have been (a) part of the normal expenditure of the deceased, and (b) to have been reasonable, having regard to the amount of his income or to the circumstances.

(3) Gifts which, in the case of any donee, do not exceed in the aggregate 100*l.* in value or amount.

With reference to class (1), gifts in cases like *Att.-Gen.* v. *Holden* (see p. 38) and *H.M. Advocate* v. *Heywood-Lonsdale's Trustees* (10,000*l.* action) (see p. 40), would no longer be liable to Estate Duty.

This benefit is only given to gifts *inter vivos* and will not affect claims for Estate Duty under marriage settlements where the liability attaches under sect. 1 or the other clauses of sect. 2 of the principal Act.

As to class (2). The ordinary annual allowances which a father makes to his children or a rich man to aged servants and poor relatives will fall under this heading. Exceptional gifts even when "reasonable" are not "normal" within the meaning of this sub-section.

As to class (3). As gifts, &c., made or effected for public or charitable purposes are, by the proviso to sub-sect. 1, expressly excluded from the operation of the *whole* of this *section*, it would appear that such gifts are not affected by sub-sect. 2, and therefore a gift of 90*l.* to a charity seems to be strictly still liable to Estate Duty if made within twelve months of the deceased's death. This section as originally drawn consisted only of that part which is now sub-sect. 1, and as gifts for public or charitable purposes were expressly excluded from the tightening up in that sub-section, it may be therefore assumed there was no intention of excluding such gifts from the benefits of sub-sects. 2 and 3. It is officially, therefore, so construed, the proviso in sub-sect. 1 being limited to that sub-section.

A gift with a reservation as well as a gift without a reservation if not exceeding 100*l.* in value is exempt.

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing

on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

This sub-section removes a difficulty in the construction of sect. 38 (2) (a) of the Customs and Inland Revenue Act, 1881 (see p. 35), as amended by sect. 11 of the Customs and Inland Revenue Act, 1889 (see pp. 36 and 40), incorporated into the Finance Act, 1894, by sect. 2 (1) (c).

Under these sections it would appear to be possible for Estate Duty to be payable on "property taken under a gift, whenever made, of which *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor," &c., and notwithstanding that the donor years before his death might have entirely surrendered all the benefits originally retained.

Example:—

A. in 1892 gave his son B. 1,000*l.* absolutely, reserving to himself 30*l.* per annum for life, which B. covenanted to pay during A.'s life. A. released B. from this 30*l.* annuity in 1900, and died in 1907. Estate Duty would have been payable on A.'s death on the 1,000*l.* under the said sections.

This sub-section prevents Estate Duty attaching in cases where the deceased has surrendered all his retained interest more than three years before his death.

Similarly, it was possible in the construction of sect. 11 of the Finance Act, 1900, to take the somewhat technical view that where a life tenant had surrendered his life interest to the remainderman (say) in consideration of an annuity, and that

annuity had again been given up more than a year before the life tenant's death, Estate Duty was still payable on the life tenant's death because the original surrender was not to his entire exclusion.

Hereafter, under the provisions of this sub-section, if the deceased has surrendered all his interest in any property (in which he had a life interest) to his entire exclusion more than three years prior to his death, no Estate Duty will be payable.

60.—(1) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of Estate Duty) shall cease to have effect.

This sub-section only applies to deaths on or after the 30th April, 1909.

The proviso abolished is as follows:—"Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding 5 per cent. of the annual value so assessed."

Agricultural property, therefore, will require to be valued on the basis of its saleable value except (a) cases affected by the provisions of sect. 64; (b) the valuation of property consisting of a tenancy from year to year (see sect. 61 (1))—this will affect chiefly Irish estates, such tenancies in England having, speaking generally, no saleable value; and (c) in determining the gross value of property for the purpose of sect. 16 of the Finance Act, 1894. (See sect. 61 (1).)

As to the valuation of cottages on agricultural estates, see sect. 18 of the Finance Act, 1911.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the

Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

This sub-section applies chiefly to stocks and shares, for it is obvious that to place a very large holding of any stock or shares on the market, either in one block or in a continuous stream of small amounts, must have a depreciating effect on the value of such stock or shares. To take the price as one-fourth up from the lower to the higher of the two quotations in the Daily Stock Exchange List in many cases would result in fixing the value at a sum that could not be obtained on a sale. It therefore became necessary in order to arrive at the saleable value to make some allowance on account of the very large holding of the deceased. This sub-section now abolishes such allowance, but provides instead that where the deceased's death depreciates the value, such depreciation may be taken into account.

"**The whole property**" means the whole of the deceased's holding.

See *Ellesmere* (*Earl*) v. *Inland Revenue Commissioners* (p. 156) as to a smaller price being obtained by sale of property in one lot than would have been realised in several lots.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I. of this Act, and the

provisions as to appeals under that Part of this Act shall apply accordingly.

See p. 222 as to appeals under sect. 10 of the Finance Act, 1894.

This sub-section operates whether the death occurred before, on, or after the 30th April, 1909. See

Man-Stuart v. *The Commissioners of Inland Revenue.*

Colonel John A. Man-Stuart died on 8th November, 1908, leaving certain heritable property which he bequeathed to his wife, who survived him. She delivered an Estate Duty account wherein the value of the property was stated at 4,000*l.* as valued by a local valuer. The property was valued by the Superintending Valuer on behalf of the Crown at 5,000*l.*, on which amount Estate Duty was assessed. On 10th August, 1910, the duty as assessed was paid under protest, and an appeal against the valuation put on the property was lodged under sect. 10 of the Finance Act, 1894. The appeal was taken to the Sheriff at Aberdeen. The appellant asked the Court to fix the value of the property at 3,500*l.* The Crown objected to the appeal as incompetent, and maintained that the appellant's remedy was by appeal to a referee under sect. 33 of the Finance (1909–10) Act, 1910, in accordance with the provisions of sect. 60 (3) of the Act, notwithstanding that the deceased died before that Act was passed.

On 7th December, 1910, Sheriff-Substitute Young upheld the contention of the Crown and dismissed the appeal as incompetent. The Sheriff-Substitute said (*inter alia*): "That provision does not interfere with vested rights or impose any fresh obligation, but only introduces a new mode of procedure in certain appeals under the Fiscal Code, and statutory alterations in existing procedure are presumably retrospective unless a contrary intention be clearly shown. (*Vide Kimbray* v. *Draper* (1868), 3 Q. B. 160, and *Gardner* v. *Lucas* (1878), 3 A. C. 582, at p. 601.)"

The provisions as to appeals under Part I. of the 1910 Act are contained in sect. 33 of that Act, as amended by sect. 7 of the Revenue Act, 1911.

The appeal is to be referred, in accordance with rules, to a referee, from whose decision an appeal may be taken to the Court.

The rules governing appeals to a referee are contained in:—

The Land Values (Reference) Rules, 1910, dated 5th December, 1910 (Statutory Rules and Orders, 1910, No. 1339, L. 37).

The Land Values (Referee) (Scotland) Rules, 1911, dated 24th April, 1911 (Statutory Rules and Orders, 1911, No. 433, S. 44).

The Land Values (Refere) (Ireland) Rules, 1911, dated 22nd February, 1911 (Statutory Rules and Orders, 1911, No. 414).

The Forms of Notice of Appeal are numbered as follows :—

In England No. 35, in Scotland No. 15, and in Ireland No. 76.

The rules governing appeals to the Court from the decision of a referee in England are contained in :—

The Rules of the Supreme Court (Finance (1909–10) Act), 1911, dated 16th January, 1911 (Statutory Rules and Orders, 1911, No. 14, L. 1).

The Rules of the Supreme Court (Finance (1909–10) Act), 1912, dated 18th December, 1912.

Rules of the Supreme Court dated 10th September, 1914 (Statutory Rules and Orders, 1914, No. 1389, L. 34).

See *Ellesmere* (*Earl*) v. *Inland Revenue Commissioners* (p. 156) as to the jurisdiction of a referee to award costs.

61.—(1) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

If the deceased was the owner in fee simple of an estate or farm let on a yearly tenancy, the deceased's interest does not consist of a yearly tenancy. It is considered, however, that where the deceased was a tenant who had entered into an agreement to purchase under the Land Purchase (Ireland) Acts, if the property is agricultural, his interest may be valued under the proviso to sect. 7 (5) of the Finance Act, 1894, for determining the gross or net value of his property for the purpose of sect. 16 of the Finance Act, 1894.

It was decided in *Re Lynder's Estate* (1910), 1 Ir. R. 231, that the signing of an agreement under the Land Purchase Acts does not determine the tenancy, but leaves the purchaser still in law the tenant of the holding until the land is vested in him by the Land Commission.

(2) Where it is claimed that a fixed duty is payable in respect of any property under sub-section (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be, and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase-money, or money borrowed for the purpose of paying purchase-money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

This sub-section refers only to deaths on or after the 29th April, 1910.

This sub-section applies to any kind of property, real or personal, which is subject to a charge created for the purpose of paying therefor. As a result, the net value only of such property, after deducting the charge (but without deducting any interest), is to be taken into account in ascertaining the gross value of the deceased's estate for the purpose of sect. 16 (1) of the Finance Act, 1894.

Examples :—

1. A. purchases Blackacre for 1,000*l.*, and at the time of the purchase mortgages it to secure 800*l.* of the purchase-money. A. dies after the 30th April, 1909, leaving Blackacre (net 200*l.*) and other assets of the gross value of 250*l.* A grant to A.'s estate may be taken out under sect. 16 (1) of the Finance Act, 1894, and the fixed duty of 50*s.* only need be paid.
2. A. purchases Whiteacre for 1,000*l.*, and pays for it

without having to resort to a mortgage to enable him to complete his purchase. Two years later A. mortgages Whiteacre for 800*l.* A. dies after the 30th April, 1909, leaving Whiteacre (net 200*l.*) and also other assets of the gross value of 250*l.* and net value of 200*l.* This sub-section does not apply because the mortgage was not made for the purpose of enabling A. to complete his purchase, therefore the *ad valorem* Estate Duty at 1 per cent. (= 4*l.*) must be paid.

Money borrowed for the purpose of building is understood to come within the provisions of this sub-section.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of Estate Duty by instalments).

Land Purchase (Ireland) Acts. The chief of these are :—

The Purchase of Land (Ireland) Act, 1885 (48 & 49 Vict. c. 73).

The Purchase of Land (Ireland) Act, 1891 (54 & 55 Vict. c. 48).

The Purchase of Land (Ireland) Act, 1901 (1 Edw. 7, c. 3).

The Irish Land Act, 1903, Part I. (3 Edw. 7, c. 37).

The Irish Land Act, 1904 (4 Edw. 7, c. 34).

The Irish Land Act, 1909 (9 Edw. 7, c. 42).

The annuity referred to is (it is presumed) the annuity to secure the purchase-money advanced to tenants who purchase their holdings under these Acts.

This sub-section is considered to apply to land subject to the payment of interest to the Irish Land Commission in lieu of rent.

It is to be observed that under sects. 83—85 of the Local Registration of Title (Ireland) Act, 1891, registered land purchased under the Land Purchase (Ireland) Acts devolves in general as personal estate, and that under sect. 32 (4) of the Land Law (Ireland) Act, 1896, an agreement for purchase, a vesting order or *fiat*, does not operate to convert the interest of a purchaser into real estate.

See *Inland Revenue Commissioners* v. *Cookman* (p. 141) as to value of a holding in Ireland subject to such an annuity.

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase-money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase-money has not been paid, the Estate Duty payable in respect of that purchase-money may, at the option of the person liable to pay the same, be postponed until the purchase-money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

This sub-section enables the Estate Duty on the purchase-money of land sold under the Land Purchase (Ireland) Acts to be postponed until such purchase-money is actually received.

(5) Where an estate, in respect of which Estate Duty is payable on the death of a person dying after the passing of this Act, comprises land on which timber, trees, or wood are growing, the value of such timber, trees, or wood shall be aggregated with the other property passing on the death of the deceased for the purpose of determining the value of the estate and the rate of Estate Duty, but the Estate Duty which, but for this sub-section, would be payable on the principal value of the timber, trees, or wood shall not be payable thereon, but shall, at the rate so ascertained, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of the timber, trees, or wood, when felled, during the period which may elapse until the land on the death of some other person again becomes liable or would, but for this sub-section, have become liable to Estate Duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent.

per annum from the date when such moneys are received:

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of Estate Duty on the principal value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of Estate Duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable.

This sub-section shall apply to Succession Duty payable in respect of woodlands in like manner as it applies to Estate Duty, except that nothing in this sub-section shall affect the rate of Succession Duty.

This sub-section did not apply in cases where the death occurred on or after the 30th April, 1909, and before the 29th April, 1910 (the date of the passing of the 1910 Act), but this omission was put right with retrospective effect by sect. 19 of the Finance Act, 1911, but the whole of the first paragraph of sub-sect. 5 of sect. 61 of the 1910 Act, and sect. 19 of the Finance Act, 1911, were repealed by sect. 9 of the Finance Act, 1912, and that section was substituted therefor.

Sect. 9 of the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), is as follows:—

9. Where an estate, in respect of which Estate Duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to Estate Duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section five of section sixty-one of the Finance (1909-10) Act, 1910,

and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed.

The result of these amendments is that (a) the proviso to the first paragraph of sub-sect. 5 of sect. 61 of the 1910 Act, (b) the last clause of that sub-section, and (c) sect. 9 of the Finance Act, 1912, regulate the imposition of Estate Duty and Succession Duty in respect of timber, trees, wood, or underwood in all cases where the death has taken place on or after the 30th April, 1909. The value of timber, trees, wood, or underwood is not to be taken into account for ascertaining the rate of Estate Duty, such value is therefore excluded from aggregation with the principal value of the estate. Neither Estate Duty nor Succession Duty is payable until the timber, trees, or wood shall be sold. Sect. 9 of the Finance Act, 1912, regulates the duties if the timber is sold *after* it is cut, and the duty is then payable on the net moneys received "after deducting all necessary outgoings."

"**All necessary outgoings.**"—These words are used in sects. 22 and 23 of the Succession Duty Act, 1853, and will therefore receive the same limitation as in *Re Elwes* and *Re Earl Cowley*.

This expression is considered to allow the deduction of expenses incurred in replanting timber ground which has been cleared or thinned out, so far as necessary to maintain the woodlands in the state in which they were at the death.

No duty is payable under this section on moneys realised from the sale of *underwood* when cut.

Where the timber, trees, or wood are sold either with or apart from the land on which *they are growing*, Estate Duty and Succession Duty (if the latter duty is chargeable) are leviable (under the proviso to sect. 61 (5) of the 1910 Act) on the principal value thereof as at the death after deducting amount of Estate Duty (if any) already paid in respect thereof; but see p. 414 as to when the Succession Duty may be assessed on the life interest of the successor.

Estate Duty is chargeable at the rate fixed by the principal value of the land on which the timber is growing, and the duty is assessed on the value of the timber as at the date of the death and not at the date of the sale.

Examples:—

1. A. died 1912 leaving Blackacre, valued (without the timber) at 149,000*l.*, timber valued at 12,000*l.*, to his son C. in fee; Blackacre is chargeable with Estate Duty at 9 per cent. The timber is cut in 1913 and

sold for 15,000*l.* net; Estate Duty is payable on 12,000*l.* at 9 per cent. Succession Duty is payable on 12,000*l.* less 1,080*l.* for Estate Duty = 10,920*l.* at 1 per cent.

2. Facts as above, but the timber is sold *when growing* either with or apart from Blackacre, the price fixed for the timber being 15,000*l.*

Estate Duty is payable at 9 per cent. on 12,000*l.*, the value of the timber at the death; Succession Duty is payable at 1 per cent. on 12,000*l.* less 1,080*l.* for Estate Duty.

If the whole of the Estate Duty or Succession Duty has not become payable on such timber, and the land on which it stands again passes on a death and becomes subject to a new charge for Estate Duty, this new charge extinguishes all the Estate Duty and Succession Duty on the prior death.

Therefore, if in the above examples 1 and 2 C. had died before the sales of any timber had taken place, then when the timber was sold after C.'s death either (a) after being cut, or (b) when growing, neither Estate Duty nor Succession Duty would have been payable on A.'s death, but only on C.'s death.

Where a tenant for life, unimpeachable for waste, cuts and sells timber growing on property which passed on a death occurring on or after the 30th April, 1909, or sells standing timber apart from the land, the Estate Duty payable in respect of the net sale moneys is a charge thereon in the hands of the tenant for life and not upon the inheritance of the property from which the timber has been severed or separately sold.

In such a case the tenant for life may be regarded as the "owner" of the land for the purpose of sect. 9 of the Finance Act, 1912. (See *In re Smyth, Edwards* v. *Smyth.*)

The duty carries interest at the rate of 3 per centum (4 per centum on and after 31st July, 1919) per annum from the date of sale and not from the date of the deceased's death.

Succession Duty and Estate Duty on timber are now on the same footing, both being payable on the same value, but, of course, the Estate Duty will be a deduction against the capital value of the timber in the succession account.

If, however, the timber is sold with the land under the Settled Lands Acts so that the successor is entitled to the income only of the proceeds of the sale of the timber, the Succession Duty is assessed on the life interest only of the successor and not on the principal value.

If it is desired to commute for a present payment the duties which may from time to time be payable under this section or sub-section, payment will usually be accepted upon the value at the death in satisfaction of such duties.

Where the property on which the timber is growing is chargeable with Settlement Estate Duty, but the life tenant under the settlement dies before the timber is cut, it is considered that the proceeds of sale of such timber are not chargeable with Settlement Estate Duty.

Sect. 23 of the Succession Duty Act, 1853, is repealed by sect. 96 (1) of this Act, except as regards persons dying before the 29th April, 1900, therefore timber sold for not exceeding 10*l.* is liable to Succession Duty.

62. Where Increment Value Duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of Estate Duty under sub-section (1) of section seven of the principal Act for the amount of Increment Value Duty so to be collected as if it were a debt.

The Increment Value Duty was the duty imposed by sects. 1 to 12 of 20 per cent. on the increase in the site value of any land over the original site value of such land as on the 30th April, 1909. This duty was payable on the death of any person dying after the commencement of this Act where the fee simple of the land or any interest in the land is comprised in the property passing on the death of the deceased within the meaning of sects. 1 and 2, sub-sect. (1) (a), (b), and (c), of the Finance Act, 1894, as amended by any subsequent enactment.

The land values duties (which expression includes Increment Value Duty) were abolished by sect. 57 of the Finance Act, 1920 (10 & 11 Geo. 5, c. 18), and this section was repealed by sect. 64 (3) of that Act.

63. In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, section twenty of the Finance Act, 1896 (which gives

an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption from Legacy and Succession Duty as well as from Estate Duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold, and then only in respect of the last death on which the property passed.

For sect. 20 of the Finance Act, 1896, see p. 336 and notes there.

The exemption conferred by sect. 20 is extended to Legacy and Succession Duty and also to take effect whether the objects are settled or not.

The benefits are extended to objects of "artistic interest," whereas under sect. 20 they only included objects of a "national, scientific, or historic interest."

Under sect. 20 the duty became payable when the objects were in the possession of someone competent to dispose of them, but under this section the duty only becomes payable when the property is sold, and then only on the last death on which the property passed.

Example:—

A. died 1st May, 1909, possessed of pictures valued at 100,000*l.* which the Treasury certified to be within sect. 20 of the Finance Act, 1896. A. bequeathed such pictures to B. absolutely. B. died June, 1910, and bequeathed same pictures to C., who sold same in August, 1910. Estate Duty is only payable on B.'s death after the sale by C.

64. Where an interest in expectancy within the meaning of Part I. of the principal Act in any property has, before the thirtieth day of April nineteen hundred and nine, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession

than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

This section qualifies every section (in this part of this Act) that can cause a higher duty to be paid than would have been paid before the passing of this Act; it should therefore be read as a qualification to all such sections, and it has already been noted under each.

PART VIII.—GENERAL.

96.—(1) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(3) Part III. of this Act shall be construed together with the Finance Act, 1894.

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

SCHEDULES.

SECOND SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and does not exceed			500	1
,,	500	,,	,,		1,000	2
,,	1,000	,,	,,		5,000	3
,,	5,000	,,	,,		10,000	4
,,	10,000	,,	,,		20,000	5
,,	20,000	,,	,,		40,000	6
,,	40,000	,,	,,		70,000	7
,,	70,000	,,	,,		100,000	8
,,	100,000	,,	,,		150,000	9
,,	150,000	,,	,,		200,000	10
,,	200,000	,,	,,		400,000	11
,,	400,000	,,	,,		600,000	12
,,	600,000	,,	,,		800,000	13
,,	800,000	,,	,,		1,000,000	14
,,	1,000,000	-	-	-	-	15

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
* *	* *	* * * *
36 Geo. 3, c. 52.	The Legacy Duty Act, 1796.	In section fourteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein."
54 Geo. 3, c. 92.	The Probate and Legacy Duties (Ireland) Act, 1814.	In section fifteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein."
* *	* *	* * * *
16 & 17 Vict. c. 51.	The Succession Duty Act, 1853.	Section twenty-three, except as respects persons dying before the passing of this Act.
* *	* *	* * * *
59 & 60 Vict. c. 28.	The Finance Act, 1896.	In section twenty, the words from "and is settled" to "by different persons"; the words "by a person not competent

Session and Chapter.	Title or Short Title.	Extent of Repeal.
59 & 60 Vict. c. 28.	The Finance Act, 1896—*continued.*	to dispose of the same"; the words "or is in the possession of some person who is then competent to dispose of the same"; the words "and also the person being in possession and competent to dispose of the same"; and the words from "and in the case" to the end of the section, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.
7 Edw. 7, c. 13.	The Finance Act, 1907.	In section two, the word "tobacco"; and section twelve, and the First Schedule, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.

FINANCE ACT, 1911.

[1 & 2 Geo. 5, c. 48.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make other provisions for the Financial Arrangements of the Year. [16th December, 1911.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part V.—Death Duties.

18. It is hereby declared that, in estimating for the purposes of sub-section (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

See notes at sect. 7 (5) of the Finance Act, 1894.

19. Sub-section (5) of section sixty-one of the Finance (1909–10) Act, 1910 (which relates to duty in respect of timber, trees, or wood), shall have effect and shall be deemed always to have had effect as if the words "on or after the thirtieth day of April nineteen hundred and nine" were substituted for the words "after the passing of this Act."

This section was repealed by sect. 9 of the Finance Act, 1912, and therefore need not be considered further.

PART VI.—GENERAL.

22. (1) and (2). [These sub-sections do not effect Estate Duty.]

(3) This Act may be cited as the Finance Act, 1911.

FINANCE ACT, 1912.

[2 & 3 Geo. 5, c. 8.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make other provisions for the Financial Arrangements of the Year. [7th August, 1912.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part III.—Inland Revenue (Miscellaneous).

9. Where an estate, in respect of which Estate Duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the

death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to Estate Duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section five of section sixty-one of the Finance (1909–10) Act, 1910, and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed.

See notes at sect. 61 (5) of the Finance (1909–10) Act, 1910.

Part V.—General.

13.—(1) [This sub-section does not refer to Estate Duty.]

(2) This Act may be cited as the Finance Act, 1912.

FINANCE ACT, 1914.

[4 & 5 Geo. 5, c. 10.]

An Act to continue the Duty of Customs on Tea, to reimpose Income Tax and Super-Tax, with amendments and modifications, and to amend the Law relating to Death Duties and the National Debt, and for purposes incidental thereto.

[31st July, 1914.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part III.—Death Duties.

12.—The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of estate duty set out in the Second Schedule to the Finance (1909–10) Act, 1910, as the scale of rates of estate duty.

The former scales are set out on pp. 264 and 265. Where the principal value of the estate does not exceed 60,000*l.*, the rates are the same as those imposed by sect. 54 of the Finance (1909–10) Act, 1910. The increased rates do not affect

purchasers or mortgagees of property sold or mortgaged before the 11th May, 1914. (See sect. 16 of the Finance Act, 1914.)

The rates were again increased by sect. 29 of the Finance Act, 1919, in the case of persons dying on or after the 31st July, 1919.

13.—(1) The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, were necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

The effect of sub-sect. (1) is that the additional duty attributable to the higher rate is never to exceed in amount the sum by which the estate exceeds the next lower rate.

Example :—

An estate of 20,000*l.* is chargeable with Estate Duty at 5 per cent. = 1,000*l.*

An estate of 20,100*l.* would formerly have paid Estate Duty at 6 per cent. = 1,206*l.*, therefore the increase of 100*l.* in the estate would have involved the payment of the additional duty of 206*l.* Under this subsection, however, the duty payable is 1,100*l.*, viz., 1,000*l.* + 100*l.*, the amount by which the estate exceeds 20,000*l.*, the value on which the highest amount of duty would have been payable at the lower rate.

If the "estate" consists of several properties passing under different dispositions, but aggregable *inter se*, the benefit of this sub-section is apportionable rateably amongst them.

This sub-section applies only to those cases in which the duty becomes legally due (see sect. 6 (7) of the Finance Act, 1894) after the commencement of the Act, viz., on or after the 31st July, 1914.

(2) Where the net value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds one

thousand pounds, the amount of legacy and succession duty payable in respect of the property shall not exceed the amount by which the net value of the property as estimated for the purposes of estate duty exceeds one thousand pounds.

The effect of sub-sect. (2) is that where an estate would be exempt from Legacy and Succession Duty if it did not exceed 1,000*l.*, under the provisions of sect. 16 (3) of the Finance Act, 1894, but, as a fact, it does exceed 1,000*l.*, then the Legacy and Succession Duties together, in respect of such estate, are never to exceed the amount by which the net value of the property, as estimated for the purposes of Estate Duty, exceeds 1,000*l.*

Example:—

A. leaves 1,008*l.* net estate, and bequeaths same to a stranger B. The Estate Duty payable (by virtue of sect. 13 (1)) is 28*l.* The net value for the purposes of Legacy Duty is, say, 970*l.* 10*s.* Legacy Duty on this sum would be 97*l.*, but by virtue of this sub-section it is only 8*l.*

It will be observed the sum of 8*l.* is twice taken into consideration, once for the Estate Duty purposes, and again for the Legacy and Succession Duty.

This sub-section applies only to those cases in which the duties become legally due on or after the 31st July, 1914.

The benefit conferred by this sub-section is apportionable amongst several legatees and successors.

14. Any relief from the payment of estate duty given by subsection (2) of section five, or by subsection (1) of section twenty-one of the Finance Act, 1894 (which relate to settled property), or by subsection (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and settlement estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen:

Provided that—

(a) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, estate duty has been paid or any of the duties specified in subsection (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of estate duty on the death of the other party to the marriage; and

Sub-sect. (2) (see p. 104) of sect. 5 of the Finance Act, 1894, prevented Estate Duty being levied twice in respect of "settled property," unless the second deceased had been competent to dispose of the property since the date of the settlement under which Estate Duty had already been paid.

Sect. 14 abolishes this relief (subject to proviso (a)), so that Estate Duty may now be payable two or more times under the same settlement.

Example :—

A., by settlement of 1892, settled 10,000*l.* on himself for life (died 1899), and then for his wife B. for life (died 16th August, 1914), then for his son C. for life (died 1st September, 1914), then for D. (C.'s wife) for life (died 1st October, 1914), then for C.'s children equally.

Estate Duty is payable on the death of A., and again on the death of C. No Estate Duty is payable on the deaths of either B. or D., because of proviso (a), which continues the relief from Estate Duty on the death of the deceased, who is a spouse of the former deceased, on whose death Estate Duty had already been paid. The payment of Estate Duty on A.'s death relieves the property from a further charge for Estate Duty on B.'s death, likewise the payment of Estate Duty on C.'s death relieves from the charge of Estate Duty on D.'s death.

Sub-sect. (1) (see p. 282) of sect. 21 of the Finance Act, 1894, similarly conferred exemption from Estate Duty in

respect of "settled" personal property which had borne Probate Duty or Account Stamp Duty, unless in either case the deceased had been competent to dispose of the property since the disposition took effect. This relief is now abolished.

Example :—

A. (died 1892) by will gave all his property, consisting of real estate and personal estate (including foreign moveables), to his son B. for life (died September, 1914), and then to C. (B.'s wife) for life (died October, 1914), and then to B.'s children equally. Estate Duty is payable on B.'s death in respect of all the property, including the British personal property on which Probate Duty was paid on A.'s death. If B. had died prior to 16th August, 1914, Estate Duty would have been payable only on the real property and investments representing the foreign moveables. Estate Duty is not payable on C.'s death, because of proviso (a).

Sub-sect. (16) (see p. 310) of sect. 23 of the Finance Act, 1894, conferred exemption from Estate Duty on entailed property in Scotland which had once borne Estate Duty until the death of an heir of entail, who is entitled to disentail it without the consent of any subsequent heir or having the consent of any subsequent heir valued and dispensed with. Estate Duty is now payable on the death of every heir of entail who is in possession of the property at his death.

Proviso (a) continues the relief from Estate Duty (conferred by sects. 5 (2) and 21 (1) of the Finance Act, 1894) when the second deceased is the spouse of the first deceased, on whose prior death Estate Duty or Probate or Account Stamp Duty was paid.

Example :—

A. (died 1899) by will gave all his property (real and personal) to his wife B. for life (died September, 1914), then to his son C. for life (died October, 1914), then to C.'s children equally.

Estate Duty is paid on all the property on A.'s death. Estate Duty is not again payable on B.'s death, because of proviso (a), but Estate Duty is payable on C.'s death.

For the purpose of this proviso it seems to be immaterial that the spouses were afterwards divorced.

Claims for Estate Duty that arise by reason of this section do not affect purchasers or mortgagees whose conveyances or mortgages were made before 11th May, 1914. (See sect. 16.)

Estate Duty payable by virtue of this section is a charge (see sect. 9 (1) of the Finance Act, 1894) on the property in respect of which it is payable, because such property does not pass to the deceased's executor "as such." In the above example the trustees of A.'s will are accountable for the Estate Duty payable on C.'s death, and as no part of the property passes to C.'s executor "as such," the duty is a charge thereon.

Settlement Estate Duty is abolished in the case of persons dying after the 11th May, 1914, and sub-sect. (1) of sect. 5 of the Finance Act, 1894, which imposes this duty, is repealed by sect. 18 (1) and the Second Schedule.

There have been several decisions on the question of how the Estate Duty payable in consequence of this section should be borne, viz.:—

In re Snape, Elam v. *Phillips.*

By her will (as varied by codicil) a testatrix appointed the plaintiffs executors and trustees, and among other pecuniary legacies bequeathed to her trustees "the sum of 6,000*l.* free of all duty" (and payable in priority) to be held by them upon trust for the benefit of her niece, D. H., during her life, and after her death upon trust for her children as therein mentioned, with an ultimate gift, in the event of no child of the niece attaining a vested interest, to certain charitable institutions.

The testatrix died on 22nd January, 1913, and Estate Duty and Settlement Estate Duty were paid in respect of the legacy under the Finance Act, 1894; but under sect. 5 (2) of that Act it would have been exempt from payment of Estate Duty on the death of D. H. Legacy Duty was paid on the niece's life interest.

The residuary estate of the testatrix proved insufficient to pay all the legacies in full, and in this event, according to the decision of Warrington, J., on 6th May, 1914, two legacies of 3,000*l.* and 2,000*l.* respectively bequeathed to the first two respondents had to abate proportionally. Since this decision the Finance Act, 1914, had come into operation, and under sect. 14 of that Act the exemption under the Act of 1894 from payment of Estate Duty on the settled legacy on the death of a tenant for life was abolished, and accordingly Estate Duty would, on the death of D. H., become payable as well as Legacy Duty. D. H. was living and a spinster. Part payment of the

two legacies of 3,000*l.* and 2,000*l.* had been made by the plaintiffs, and they had in their hands 1,200*l.*, but desired the protection of the Court before making any further distribution.

A summons was accordingly issued by the trustees asking whether as to the bequest of "6,000*l.* free of all duty" they ought to set aside any sums to meet the Estate Duty and the Legacy Duty payable on the death of D. H., or whether both or either of those duties would be payable out of the legacy itself.

Eve, J., held (on the 20th May, 1915) that the Legacy Duty was clearly payable out of the general estate, and the Estate Duty was payable out of the legacy, and not out of the general estate.

This case is regarded as overruled by *In re Palmer, Palmer* v. *Palmer*, in so far as laying down any general principle.

In re Brown, Turnbull v. *Royal National Lifeboat Institution.*

By her will, dated 22nd August, 1913, the testatrix appointed the plaintiffs her executors and trustees, and, amongst other dispositions, bequeathed first, a sum of stock "subject to any duty thereon" to the defendant, Mrs. Nuttall; secondly, the income of another sum of stock to her cousin during her life, and afterwards, "subject to any duty affecting the same," for two named charities; thirdly, a certain corporation annuity on trust for her servant during her life, and upon her decease to a named charity. The testatrix directed that every bequest, as well specific as pecuniary, thereinbefore made should "except where otherwise expressly stated be free and clear of duties." The testatrix gave all her real and residuary personal estate to her trustees upon trust for sale and conversion, and, after payment of her funeral expenses, her testamentary expenses, and debts and pecuniary legacies thereinbefore bequeathed and the duties thereinbefore directed to be paid, upon trust for five named charities.

The testatrix died on 2nd November, 1914, and the plaintiffs proved her will on 21st December, 1914.

The plaintiffs took out this summons for the determination of the question how, as between the various legatees and the residue, Legacy Duty and Estate Duty payable on the death of the testatrix, and the further Estate Duty payable on the determination of the life interests in the settled legacies, should be respectively borne and paid.

Younger, J. (on 23rd February, 1916), held (1) that under the first bequest the legatee took the legacy of stock subject to Legacy Duty, but not subject to any part of the Estate Duty payable on the testatrix's death; (2) that under the second bequest (the Legacy Duty being payable at one and the same rate by the persons entitled in succession under sect. 12 of the Legacy Duty Act, 1796), no Legacy Duty or any part of the Estate Duty payable on the death of the testatrix was payable by the charities entitled to the settled legacy on the determination of the prior life interest, which was given free and clear of duties, but that the Estate Duty payable under sect. 14 of the Finance Act, 1914, upon the death of the person entitled to such life interest must be borne and paid by the charities; and (3) that under the third bequest the Estate Duty payable under the lastly-mentioned section upon the death of the person entitled to a life interest in the corporation annuity must be provided and paid out of the testatrix's estate.

In re Palmer, Palmer v. *Palmer.*

George William Palmer, by his will dated 14th October, 1910, bequeathed to his trustees the sum of 25,000*l.* upon trust during the life of his wife to pay the income to the person who would for the time being be entitled as tenant for life or tenant in tail to the rents of his settled hereditaments if his wife were then dead, and after the death of his wife directed the said sum to fall into his residue; and after bequeathing an annuity of 12,000*l.* to his wife during her life, directed that all legacies, annuities, and bequests whatsoever thereinbefore given or which might be given by any codicil, should "*be handed over or paid free of all duties or deductions in respect of duties (other than income tax)*" to the several legatees or annuitants; and the testator thereby devised his settled hereditaments to his trustees upon trusts to permit his wife during her life to have the use and enjoyment of all or any part thereof so far as she elected to do so, and subject thereto to apply the rents in the same way as the income of his settled residue was thereinafter directed to be applied, and after the death of his wife devised the settled hereditaments to the use of his nephew, Ronald William Palmer (formerly Poulton), for life, with remainder (in the events which happened) to his nephew, Eustace Exall Palmer, for life, with remainder to the use of his children or issue as he should appoint, and in default of appointment to the use of his first and other sons successively in tail male, with remainder to the

use of his first and other daughters, successively in tail, subject to the usual provision cutting down estates of tenants in tail born in the testator's lifetime to estates for life with remainder to their issue; and the testator thereby gave his residuary real and personal estate to his trustees upon trust for sale and conversion, and upon trust out of the moneys so to arise to pay his funeral and testamentary expenses and legacies and to make provision for the said annuity of 12,000*l.* and for the payment of all duties on any devises and bequests "*hereinbefore made free from duties or deductions for duties*," and to invest the residue upon trust, during the period of accumulation therein mentioned, out of the income of the settled residue to pay an annual sum of 3,000*l.* to the person who would for the time being be entitled as tenant for life or tenant in tail to the rents of the settled hereditaments if his wife were then dead, and to accumulate the surplus income as therein mentioned, and after the determination of the period of accumulation to pay the entire income to his wife during her life, and after her death upon trust to hold the settled residue and the accumulations thereof upon the trusts therein declared.

The testator died on 8th October, 1913.

Ronald William Palmer died a bachelor on 4th May, 1915.

Eustace Exall Palmer had two sons and a daughter, all of whom were living at the testator's death. He had not yet exercised the power of appointment reserved to him by the will.

This was an originating summons taken out by the trustees raising the question how, as between the beneficiaries under the will, the Estate Duty imposed since the testator's death by sect. 14 of the Finance Act, 1914, on the death of Ronald William Palmer, in respect of the settled legacy of 25,000*l.* and of the notional sum (75,000*l.*) necessary to produce the annual sum of 3,000*l.*, ought to be borne :—

Held by the Court of Appeal (on the 3rd June, 1916) that the Estate Duty in respect of the 25,000*l.* was payable thereout, and that inasmuch as the annuity of 3,000*l.* was chargeable on the whole residue, the residue must bear the duty, the annuitant (E. E. Palmer) being liable, however, to pay interest on a rateable proportion of such duty.

The M. R. said at [1916] 2 Ch. 398: "The Commissioners treated the 3,000*l.* payable to [the deceased] as an annuity which ceased on his death. . . . They then applied sect. 7 (7) (b) [of the Finance Act 1894]. . . . 75,000*l.* is a purely fictitious sum or a 'notional sum.' The annuity was chargeable on the whole residue and not upon any particular 75,000*l.* No charge

can be given under sect. 9 upon a non-existing fund. It is the whole residue which has derived benefit from the cessation of the annuity, and the burthen upon the income of the residue must be apportioned on the footing of sect. 14 [of the 1894 Act]. . . . In my opinion there is no justification for throwing the whole duty upon an imaginary 75,000*l.*, with the consequence that the annuitant would have to pay the full interest on the amount paid. The annuitant must bear his rateable proportion only, in accordance with Kekewich's rule in *In re Parker Jervis*, [1898] 2 Ch. 643."

Compare *In re Tattersall's Settlement, Public Trustee* v. *Tattersall*, on latter part.

In re Hatch, Hatch v. *Hatch.*

A testator, who died in 1907, by his will directed his trustees to hold certain securities in trust for A. for life with remainder over, and other property in trust for B. for life with remainder over. He also directed that any death duties payable in respect of "all and every the benefits given by this my will," except those relating to his residuary estate, should be borne by such residuary estate. A. died in October, 1914, and B. in 1915. The question raised was whether the direction quoted covered the Estate Duty payable under sect. 14 of the Finance Act, 1914, on the deaths of A. and B.

Sargant, J., held (on 7th June, 1916) that in view of *In re Palmer, Palmer* v. *Palmer*, the direction in the will covered all the duties payable on the deaths of A. and B.

In re Stoddart, Bird v. *Grainger.*

A testator, who died in 1913, by his will directed "all the legacies (whether settled or otherwise) and the annuities hereinbefore bequeathed to be paid and enjoyed free of all death duties." The trustee took out a summons for determining whether the Estate Duty prospectively payable in respect of the settled funds in connection with deaths of the life tenants would be payable out of the settled funds or out of the residuary estate.

Sargant, J., held (on 21st June, 1916) that the words of the will threw the duty on the residuary estate.

In re Gunn, Harvey v. *Gunn.*

By his will dated 6th December, 1904, the testator, who died on 11th August, 1915, devised and bequeathed all his real estate

and the residue of his personal estate to his trustees upon trust for sale and conversion, and, after directing payment out of the moneys arising therefrom and out of his ready money of "my funeral and testamentary expenses and debts, the pecuniary legacies bequeathed by this my will or any codicil thereto, the legacy duties payable in respect thereof, and the Estate Duty and Settlement Estate Duty payable in respect of my estate or any part thereof," directed his trustees to stand possessed of the residue of the said moneys (thereinafter called his trust fund) upon trusts under which certain of his sons took immediately specific sums absolutely, and other specific sums were settled in trust for a son or daughter for life, with remainder to his or her issue or brothers or sisters; and as to the residue of his trust fund the testator directed the same to be divided among his children who survived him and the issue then living of any child of his then dead, in manner therein mentioned. The testator made a codicil modifying his will, but not in a manner material to be here stated.

The trustees took out a summons for the determination (*inter alia*) of the question whether the Estate Duty, other than that payable on the testator's death, which would become payable under sect. 14 of the Finance Act, 1914, in respect of the sums forming part of the residuary estate and settled by the will, was payable out of the residuary estate or ought to be borne by the settled sums respectively.

Peterson, J., held (on the 30th June, 1916) that when the testator spoke of Estate Duty and Settlement Estate Duty he meant only those duties payable at the time when the trust fund was available by realisation for distribution between the various persons who under the ultimate trust in his will were entitled to it, and that the direction to pay the Estate Duty in respect of the testator's estate did not include the future Estate Duty payable under sect. 14 of the Finance Act, 1914, on the termination of the life interests in the settled sums.

In re Tinkler, Loyd v. *Allen.*

A testator, who died in 1872, bequeathed to his trustees the sum of 10,000*l.* upon trusts for the benefit of his adopted daughter, A. T., for her life, and after her decease for her children and issue. He then directed that "all duties payable in respect of the said sum of 10,000*l.* given to my trustees upon trust for the benefit of my said adopted daughter, A. T., and her issue shall be paid out of and be a charge upon my residuary

estate." And, after giving to his trustees a further sum of 10,000*l.* upon trust "to pay the income therefrom free of duty" to D. D. B. for her life, with a gift over, the testator gave the residue of his estate (after payment of testamentary expenses, debts, and legacies) upon trust to pay the income to A. S. for life, and after her decease to pay or transfer so much of the clear residue of his estate as might lawfully be given for that purpose to St. M.'s Hospital, and to be possessed of the residue (if any) as was not effectually disposed of by the foregoing gifts and trusts upon trust for A. T. absolutely. In 1886 an order was made for the administration of the testator's estate, and funds were transferred into Court, and appropriations thereof were duly made in respect of the two trust legacies of 10,000*l.* each and in respect of the pure personalty and impure personalty constituting the residuary estate. In 1889 A. T. assigned her reversionary interest under the will to the P. Co. absolutely. In September, 1916, A. S. died.

On petitions presented by the P. Co. and St. M.'s Hospital respectively for payment to them of their respective shares of the funds representing the residue :—

Held by Younger, J. (on the 28th November, 1916), that the Estate Duty on the first-mentioned legacy of 10,000*l.*, which under sect. 14 of the Finance Act, 1914, would become payable on the death of A. T., would have to be borne by the residuary estate.

In re D'Oyley, Vertue v. *D'Oyley.*

A testatrix, who died in December, 1914, by her will dated 1911, after giving numerous pecuniary legacies "free of duty," gave to trustees "the sum of 7,000*l.* free of duty" upon trust for A. for life, and after his death upon trust for his wife and children; and the testatrix gave the residue of her estate, "after payment thereout of her just debts, funeral and testamentary expenses and the duties on the thereinbefore mentioned legacies," to B. absolutely. Between the date of the will and of the death of the testatrix sect. 14 of the Finance Act, 1914, came into operation, which abolished the relief from Estate Duty given by sect. 5, sub-sect. 2, of the Finance Act, 1894, and the question arose whether the Estate Duty which under sect. 14 of the Act of 1914 would be payable on the death of A. in respect of the legacy of 7,000*l.* ought to be borne by the *corpus* of the legacy or by the residuary estate :—

Held by Neville, J. (on 15th February, 1917), that upon the

true construction of the will the words "free of duty" were limited to the duties presently payable on the death of the testatrix in respect of the legacy, and did not extend to any Estate Duty that might become payable on the death of A.; and that on payment of the legacy to the trustees without deduction there was no obligation to retain any part of the residuary estate for any claim that might arise for such Estate Duty.

In re Eve, Hall v. *Eve.*

By her will, dated 31st August, 1910, a testatrix, after giving certain specific and pecuniary legacies, gave (clause 8) 8,000*l.* to her trustees upon trust for her brother for life, and after his death for persons liable to Legacy Duty at the same rate.

By clause 9 she declared that "all the foregoing gifts, bequests, and legacies shall be free of duty."

By clause 10 she gave her residuary estate to her trustees upon trust for sale and conversion, and directed them, after payment (*inter alia*) of her legacies "and the duty on all gifts, bequests, and legacies bequeathed free of duty," to hold the net proceeds upon trust for two residuary legatees.

The testatrix died on the 9th October, 1915, *i.e.*, more than a year after Settlement Estate Duty and the relief thereby conferred had been abolished by the Finance Act, 1914, s. 14.

The 8,000*l.* settled legacy was set aside and the Legacy Duty paid at once, as the successive beneficiaries were liable to the same rate. The life tenant of the settled legacy died on the 27th July, 1916, and 401*l.* Estate Duty became payable on the cesser of his life interest. The question arose whether this sum was payable out of the settled legacy or residue. On the 1st February, 1917, the trustees, who had still sufficient residue in hand to pay this sum as well as the Legacy Duty on residue, issued this summons to determine the point.

Astbury, J., held (on the 7th March, 1917) that not only the settled legacy itself but the life interest and remainders therein were "bequests" within clause 9 and therefore free of duty. In these circumstances the case fell within *In re Hatch*, [1916] W. N. 240, and not within *In re D'Oyley*, [1916] W. N. 73, and the 401*l.* Estate Duty was payable out of residue.

In re Parker, White v. *Stewart.*

A testator, by his will, dated October, 1914, *i.e.*, after the Finance Act, 1914, came into operation, after making various specific and pecuniary bequests directed his trustees to set apart

and hold certain funds on trust for different persons for their respective lives with remainders over, and he declared that "all the legacies, annuities, and bequests hereinbefore made by me shall be free of Legacy Duty, Succession Duty, Settlement Estate Duty, and all other death duties, and that such duties shall be borne by and paid out of my residuary estate." He died on the 18th March, 1916.

It was held (by Sargant, J., on the 3rd April, 1917, affirmed by the C. A. on the 2nd July, 1917) that the terms of the will were wide enough to include not only the death duties payable in connection with his own death in respect of the funds in question, but also those future death duties which would arise in respect thereof as and when the subsequent limitations in the will took effect.

In the following case, in order to protect the executor from a contingent future claim for Estate Duty by reason of this section, a legacy was directed to be paid to the beneficiaries as trustees for themselves.

In re Hall-Dare, Le Marchant v. *Lee Warner.*

Testatrix, by her will dated in March, 1915, after appointing an executor thereof, bequeathed to her stepson, H. G. Lee Warner, 8,000*l.*, "and in the event of his death unmarried to his mother, B. Lee Warner." The testatrix then made various other pecuniary and specific bequests and gave the residue of her estate to her niece, D. Le Marchant. The will contained no directions as to the payment of testamentary expenses.

The testatrix died in May, 1915.

This was an originating summons taken by the executor for the determination of certain questions arising on the construction of the gift of the legacy of 8,000*l.*

Younger, J., held that the legacy vested absolutely in the defendant, H. G. Lee Warner, on the death of the testatrix, but subject to a gift over to the defendant, Mrs. Lee Warner, in the event of his dying a bachelor, but not otherwise.

The defendants, H. G. Lee Warner and Mrs. Lee Warner, having expressed a desire that the legacy should be paid over to them, the Court, in order to avoid any difficulty which might be occasioned to the executor with reference to the payment in the future of Estate Duty on the death of H. G. Lee Warner, by consent of all parties, directed that the executor should pay the legacy, less Legacy Duty, to the two defendants as trustees for themselves, according to their respective interests in it.

(b) on the first occasion on which estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of settlement estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of settlement estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income; and

The Settlement Estate Duty is only to be allowed on the first occasion on which Estate Duty becomes payable in respect of any property which would not have been payable but for this section. Therefore, if the Estate Duty becomes payable apart from this section, the Settlement Estate Duty does not fall to be allowed or returned.

Example:—

A. (died 1899) by will bequeathed 1,000*l.* to his son B. for life (died 1905), and then to C. (A.'s daughter) for life (died October, 1914), then as she should absolutely by will appoint. In default, to C.'s children equally. Settlement Estate Duty was paid on the 1,000*l.* on A.'s death. Estate Duty is payable on the 1,000*l.* on C.'s death, under the provisions of sect. 2 (1) (a) of the Finance Act, 1894, and not because of sect. 14 of

the Finance Act, 1914; therefore the Settlement Estate Duty paid on A.'s death is not allowed against the Estate Duty payable on C.'s death.

The allowance of the Settlement Estate Duty is not necessarily made to the person who paid it, nor to the property out of which it was paid.

Example:—

A. (died 1900) bequeathed 4,000*l.* to his daughter B. for life (died 15th September, 1914), then to B.'s children equally, and directed such sum to be free of Settlement Estate Duty, and bequeathed his residuary estate to his son C.

The Settlement Estate Duty, 40*l.* on the 4,000*l.* on A.'s death, was payable by C. out of A.'s residuary estate.

Estate Duty at 3 per cent. (= 120*l.*) is payable on the 4,000*l.* on B.'s death by her children, but with an allowance for the 40*l.* Settlement Estate Duty paid by C., so that B.'s children pay 80*l.* only. B.'s legal personal representative is also entitled to the interest at 3 per cent. per annum on the 40*l.* from 15th August, 1914, to 15th September, 1914 (date of B.'s death), = 2*s.*

If the Settlement Estate Duty paid exceeds the Estate Duty payable (this may happen when the Settlement Estate Duty has been paid at 2 per cent. and the Estate Duty is payable at 1 per cent.), the excess is to be repaid to "the estate."

If the Settlement Estate Duty was charged on property other than the "settled property," it is not very clear which property is to receive the benefit of the excess, the "settled property" or the other property out of which the Settlement Estate Duty was paid.

The question of how the allowance for the Settlement Estate Duty and the interest on the Settlement Estate Duty returnable under this clause should be apportioned was dealt with in

In re Booth, Pleace v. *Booth.*

A testator who died in 1913 bequeathed an annuity of 150*l.* to A. for life, payable out of the income of his residuary estate, which subject thereto he gave to B. for life. On B.'s death an additional annuity of 150*l.* was given to A. for life, and subject thereto the residuary estate was given to four persons absolutely.

Settlement Estate Duty was paid on the testator's death in respect of the residue as a whole. B. died after the 15th August, 1914, and Estate Duty was then paid on the whole residuary estate, less the capital required to meet A.'s original annuity, but with an allowance (under sect. 14 (b)) for the proportion of the Settlement Estate Duty. An originating summons was taken out by A. to determine (*inter alia*) the question whether her annuities were subject to any and what deductions therefrom in respect of Estate Duty and Settlement Estate Duty.

Held (by Younger, J., on 1st February, 1916) that A. was properly charged as between herself and the residue with interest on the Settlement Estate Duty on the capital to provide her immediate annuity; that the reduction of the Estate Duty, on B.'s death, was for the benefit of A. as well as of the residuary legatees, and that the Estate Duty upon which A. ought to bear the interest fell to be reduced in the same proportion as the Estate Duty to be borne by the residuary legatees; that the interest receivable on B.'s death belonged to B.'s representatives, and that the interest to be received on A.'s death upon the Settlement Estate Duty attributable to the capital necessary to produce her original annuity (such duty being then returnable and not earlier) would belong to A.'s representatives.

(c) Section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909–10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any estate duty payable on the death of that person which would not have been payable but for this section.

Sect. 11 of the Finance Act, 1900, as amended by sect. 59 of the Finance (1909–10) Act, 1910, provides that property shall be deemed to pass on the death of a deceased person, notwithstanding that he may have surrendered, assured, divested, or

otherwise disposed of his interest therein for the benefit of a remainderman, unless such disposition was effected three years before his death and to his entire exclusion.

The proviso (c) enables a life tenant to surrender his interest within such period of three years, if the surrender takes place between 15th August, 1914, and 1st April, 1915, without making the property chargeable with Estate Duty, if it would not have been payable but for this section.

Example :—

A. (died 1900) by will bequeathed 1,000*l.* to his son B. for life (died 1st October, 1914), and then to C. absolutely. Estate Duty is payable on B.'s death on said 1,000*l.*, because of sect. 14 of the Finance Act, 1914. But if B. surrendered his life interest to C. on 16th August, 1914, this proviso (c) would operate to prevent Estate Duty being chargeable.

It would seem that if the surrender of the life interest of a deceased person (dying after 15th August, 1914) takes place within three years of his death, but prior to 15th August, 1914, this proviso (c) does not apply, and Estate Duty may be chargeable because of sect. 14.

Example :—

A. (died 1902) by will bequeathed 2,000*l.* to B. for life (died 2nd October, 1914), and then to C. absolutely. On 1st August, 1913, B. surrendered his life interest to C. Estate Duty would seem to be payable on B.'s death on said 2,000*l.*, by reason of this section and sect. 11 of the Finance Act, 1900, as amended by sect. 59 of the Finance (1909–10) Act, 1910.

It is understood that as a fact such claims are not made if the surrender took place prior to the 1st April, 1915.

15. Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the

amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by fifty per cent.;

Where the second death occurs within two years of the first death, by forty per cent.;

Where the second death occurs within three years of the first death, by thirty per cent.;

Where the second death occurs within four years of the first death, by twenty per cent.;

Where the second death occurs within five years of the first death, by ten per cent.;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

The Commissioners have to be *satisfied* that Estate Duty has again become payable on the *same* property.

The property must consist of land or a business (not being a business carried on by a company).

It was stated in the House of Commons White Paper No. 212, dated 5th May, 1914, that the allowance under this section was intended to apply to "real property" and to "business plant, machinery, stock-in-trade, or goodwill."

The reduction is only to be given when the death is that of the person to whom the property passed on the first death. Therefore, if the person to whom it so passed assigned it to a third person, the death of such third person within five years will not give rise to the allowance.

Example:—

A. (died 1912) by will devised Blackacre to B., who in 1914 conveyed it to C. C. dies in 1915. Estate Duty will be payable on Blackacre on C.'s death without any reduction under this section.

The rate and amount of the duty paid on the first death is not material; the property on the second death is to be valued and, if necessary, aggregated with any other property passing on such death, and then, when the duty has been calculated, the allowance is to be made against the amount of duty so arrived at.

16. Where an interest in expectancy within the meaning of Part I. of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

This section is similar to sect. 21 (3) of the Finance Act, 1894; the proviso to sect. 12 (1) of the Finance Act, 1900; the proviso to sect. 12 of the Finance Act, 1907; and sect. 64 of the Finance (1909–10) Act, 1910; except that on this occasion the exemption from further duty applies only to conveyances and mortgages before the date (viz., 11th May, 1914) of the Resolution in Committee of Ways and Means, by which the new duties were agreed to, whereas in the former Acts the exemption applied to conveyances and mortgages before the date of the commencement of the Acts respectively.

Part V.—Miscellaneous.

18.—(1) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) . . .

Part III. of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1914.

The SCHEDULES above referred to.

FIRST SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate					Estate Duty shall be Payable at the Rate per Cent. of
	£			£	
Exceeds	100	and does not exceed		500	1
,,	500	,,	,,	1,000	2
,,	1,000	,,	,,	5,000	3
,,	5,000	,,	,,	10,000	4
,,	10,000	,,	,,	20,000	5
,,	20,000	,,	,,	40,000	6
,,	40,000	,,	,,	60,000	7
,,	60,000	,,	,,	80,000	8
,,	80,000	,,	,,	100,000	9
,,	100,000	,,	,,	150,000	10
,,	150,000	,,	,,	200,000	11
,,	200,000	,,	,,	250,000	12
,,	250,000	,,	,,	300,000	13
,,	300,000	,,	,,	350,000	14
,,	350,000	,,	,,	400,000	15
,,	400,000	,,	,,	500,000	16
,,	500,000	,,	,,	600,000	17
,,	600,000	,,	,,	800,000	18
,,	800,000	,,	,,	1,000,000	19
,,	1,000,000	-	-	-	20

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Statutes repealed.
57 & 58 Vict. c. 30 ...	The Finance Act, 1894.	Sub-sections (1) and (4) of section five; in section seventeen the words "the rate of the settlement estate duty where the property is settled shall be two per cent."; sub-section (4) of section twenty-one.
10 Edw. 7. c. 8.	The Finance (1909–10) Act, 1910.	Section fifty-four and the Second Schedule as respects persons dying after the fifteenth day of August, one thousand nine hundred and fourteen;

DEATH DUTIES (KILLED IN WAR) ACT, 1914.

[4 & 5 Geo. 5, c. 76.]

An Act to extend and vary as respects the present War the relief from Death Duties given under section fourteen of the Finance Act, 1900. [31st August, 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts:—

(a) Where the value for the purpose of estate duty of the property passing to the widow, lineal descendants, or lineal ancestors does not exceed five thousand pounds, the whole of the death duties leviable in respect of that property; and

(b) Where the said value exceeds five thousand pounds—

(i) in respect of the first five thousand pounds, the whole of the death duties; and

(ii) so much of the duties leviable in respect of the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the

date of death with half-yearly rests would, at the expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuitants, 1912), amount to the whole of the duties so leviable.

(2) The benefits of the relief given by this section as respects the first five thousand pounds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

(3) Where the relief in respect of estate duty afforded to the widow, lineal descendants, or lineal ancestors by section fifteen of the Finance Act, 1914, would be greater than that afforded to them in respect of estate duty by this section, the relief in respect of estate duty shall be that under the said section fifteen and not that under this section, but in other cases the relief afforded by the said section fifteen shall not apply to any estate duty to which this section applies.

Sect. 14 of the Finance Act, 1900 (63 & 64 Vict. c. 7), is as follows:—

14.—(1.) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of estate duty of the property so passing does not exceed five thousand pounds.

(2.) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

Sect. 14 of the Finance Act, 1900, and the Death Duties (Killed in War) Act, 1914, have been extended by the following Acts:—

(a) Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 46. (Set out under sect. 2, see p. 452.)

(b) Finance Act, 1917 (7 & 8 Geo. 5, c. 31), s. 29:—

29. Section fourteen of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, and section forty-six of the Finance (No. 2) Act, 1915, shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this Act, from causes arising out of the operations of the present war and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section fourteen with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

(c) Finance Act, 1918 (8 & 9 Geo. 5, c. 15), s. 44:—

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war the relief from death duties given by section fourteen of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

(d) Finance Act, 1919 (9 & 10 Geo. 5, c. 32), s. 31:—

31. Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in the case of persons killed in war) and any enactment amending or extending that section, shall in their application to the present war, have effect and be deemed always to have had effect as though—

(a) three years were substituted for twelve months wherever that expression occurs; and

(b) in the said section fourteen the expression "wounds inflicted, accident occurring or disease contracted while on active service against an enemy," included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

By Order in Council, dated 4th June, 1918, issued under sect. 13 of the Air Force (Constitution) Act, 1917, the references in sect. 14 of the Finance Act, 1900, to "service on land," "subject to military law," "soldier," and "Army Act" are respectively to be construed as including references to service by air, subject to the Air Force Act, Airman and the Air Force Act, while the references in this last-mentioned section to "Secretary of State" is to be construed as including a reference to the Secretary of State, who is President of the Air Council.

"Application for remission under the Acts must, in the first instance, be addressed to the Secretary to the Admiralty, the War Office, the Air Ministry, the India Office (if the deceased was a member of the Indian Army), or the Colonial Office (if the deceased was a member of a Dominion or Colonial contingent), or the Board of Trade (in the case of a master or a member of the crew of a ship or a fishing boat), as the circumstances may require, and if it appears that the case falls within the provisions of the Acts, a recommendation to that effect is forwarded to the Controller, Estate Duty Office, accordingly.

"While the application for remission is under consideration, it is convenient for the Inland Revenue Affidavit of the deceased's estate, together with a copy of his will (if any), and a copy of any Settlement in which he was interested, to be lodged with the Controller, Estate Duty Office (Room 21), so that any necessary notations or entries thereof may, in the meantime, be made in the records of that Office. If the deceased died intestate, a statement showing who are his next of kin and their relationship to him should be annexed to the Inland Revenue affidavit.

"Upon the receipt, in that Office, of the recommendation in question, the amount of the Estate Duty and interest payable on the Inland Revenue Affidavit is assessed, or, if the whole of the property passing does not exceed 5,000*l.* in principal value, the Inland Revenue Affidavit is endorsed with a certificate to the effect that no such duty is payable.

"Under the Finance Act, 1894, s. 8 (1), the *free estate* of a sailor not above the rank of Petty Officer, of a marine not above the rank of Sergeant, or of a soldier or airman below that rank, *dying in His Majesty's Service*, is exempt from liability to Estate Duty, whatever may be its value, or whoever may be entitled to it, and, in these circumstances, an application to the Admiralty, the War Office, the Air Ministry, the India Office, the Colonial Office or the Board of Trade, for the remission of such duty under the Acts mentioned is, accordingly, not necessary.

"In this class of case, the Inland Revenue Affidavit, when received in the Estate Duty Office (Room 21), is endorsed with a certificate to the effect that no Estate Duty is payable.

"If, however the *free estate* of such sailor, soldier or airman *dying in His Majesty's Service* exceeds 1,000*l.* in net principal value, so that Legacy or Succession Duty may be chargeable in respect of it or if settled property, involving the liability to duty, also 'passes' on his death, application for the remission conferred by the Acts, as indicated, will be necessary.

"For the purpose of the exemption from death duties in this country, the estate, situate here, of a member of the Allied forces killed, &c., in the War, is treated as if the deceased owner thereof were British." *

The "Naval Discipline Act" is 29 & 30 Vict. c. 109, printed, as subsequently amended, in accordance with the Naval Discipline Act, 1909 (9 Edw. 7, c. 41), s. 2 (2).

The "Army Act" is the Army Act, 1881 (44 & 45 Vict. c. 58). The latest amendments of this Act are contained in the Army and Air Force (Annual) Act, 1920 (10 Geo. 5, c. 7).

These Acts apply to persons who would not strictly be regarded as "officers" or "soldiers." (See sect. 89 of the Naval Discipline Act, 1866, and sects. 175 (7) and (8) and 176 (9) and (10) of the Army Act, 1881.)

The "present war" was declared as from 11 p.m. on the 4th August, 1914. (See *London Gazette*, 7th August, 1914, p. 6181.)

The amounts to be remitted are as follows:—

(a) Where the value for the purpose of Estate Duty of the share passing to the widow, lineal issue, or lineal ancestors, does not exceed 5,000*l.*, the whole of the death duties leviable in respect of that property. It will be observed the value is not the value at the date of the retainer of a legacy, for instance, but the value for the *purpose of Estate Duty* which is taken at the time of the death.

The first 5,000*l.* is not subject to aggregation. (See per Lord Crewe, in the House of Lords, on the 31st August, 1914, when moving the second reading of the Bill [H. L. Deb., Vol. 17, No. 73, col. 561].)

(b) Where the said value exceeds 5,000*l.*:

(i) In respect of the first 5,000*l.*, the whole of the death duties;

(ii) In respect of the remainder, see (b) (ii) of sect. 1 on p. 445.

In other words, if the deceased died, say, twenty years before he might have been expected to die, the duties in connection with his death are to be discounted for twenty years from the times when they would respectively have fallen due, on the assumption that the circumstances would then have been the same as at his actual death.

* The seven previous paragraphs in inverted commas are from the official leaflet issued for the information of applicants for remission.

The normal expectation of life is directed by the Act to be calculated in accordance with "The Tables of Mortality of Government Life Annuities, 1912." These Tables represent the experience of the enjoyment of Government annuities. House of Commons White Paper No. 298 of 1912, "Mortality of Government Life Annuitants," contains, at p. 18, second column, the "curtate" expectation of life of male live annuitants for ages commencing at forty. "Complete," *i.e.*, "normal," expectations are ·5 of a year higher. (See note on p. 4 of the White Paper.) "Tables for the Grant of Immediate Life Annuities," deduced from the same observations, printed in the same year, and issued by the National Debt Office, contain probabilities of life from which the expectation of life at earlier ages than forty can be calculated. These other expectations of life have been calculated accordingly by the National Debt Office.

The "normal" expectations of life for ages from fifteen to sixty-nine, and the proportions of the duty to be paid in the case of persons killed at those ages respectively, are as follows :—

MALE LIVES.

Age at Death.	Normal Expectation of Life at time of Death.	Proportion of Duty to be paid.
Years.	*Years.*	
15	46·263	·25218
16	45·445	·25840
17	44·636	·26470
18	43·833	·27110
19	43·041	·27758
20	42·259	·28411
21	41·484	·29075
22	40·717	·29746
23	39·963	·30422
24	39·215	·31107
25	38·473	·31802
26	37·739	·32504
27	37·011	·33218
28	36·288	·33940
29	35·570	·34674
30	34·854	·35421
31	34·153	·36168
32	33·447	·36936
33	32·742	·37966
34	32·037	·38521
35	31·330	·39339
36	30·627	·40172

MALE LIVES—*continued.*

Age at Death.	Normal Expectation of Life at time of Death.	Proportion of Duty to be paid.
Years.	*Years.*	
37	29·920	·41027
38	29·217	·41894
39	28·514	·42781
40	27·810	·43687
41	27·110	·44607
42	26·414	·45541
43	25·720	·46492
44	25·028	·47461
45	24·340	·48442
46	23·654	·49442
47	22·975	·50453
48	22·298	·51479
49	21·626	·52520
50	20·963	·53568
51	20·306	·54625
52	19·651	·55701
53	19·007	·56780
54	18·369	·57868
55	17·739	·58964
56	17·119	·60063
57	16·505	·61172
58	15·901	·62281
59	15·309	·63389
60	14·726	·64499
61	14·153	·65609
62	13·592	·66714
63	13·044	·67813
64	12·505	·68910
65	11·979	·69998
66	11·467	·71073
67	10·968	·72137
68	10·481	·73190
69	10·006	·74234

The age to be taken is at the last birthday before the death, as the Tables contemplate only completed years of life.

It is to be observed that the taxpayer is not entitled to the relief afforded by sect. 15 of the Finance Act, 1914, in addition to the relief afforded by this section, but only to relief under whichever section affords the larger benefit.

2.—(1) Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property passing on the death of any person to

which section one of this Act applies, and that subsequently estate duty has again become payable on the same property or any part thereof passing on the death of some other person to which section one of this Act applies, the whole of the estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case the duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of estate duty.

(2) This section shall apply whether or not on any such death any property passes to the widow or lineal descendants or lineal ancestors of the deceased.

By sect. 46 of the Finance (No. 2) Act, 1915 :—

Section two of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

Where any person dies from wounds inflicted, accident occurring, or disease contracted, within three years (see sect. 31 of the Finance Act, 1919) before death, to which sect. 1 of this Act applies, and such person leaves his property to another person, who also dies from wounds, accident, or disease caused through the present war, occurring within three years of the death, all the duties are to be remitted on such second death.

This relief will apply to any number of deaths after the first, whatever may be the value of the property, or the relationship of the beneficiaries, provided the deaths were caused by the present war, and that the same "property," which includes proceeds of sale thereof [see Finance Act, 1894, s. 22 (1) (f)], passes on the successive deaths.

3. This Act may be cited as the Death Duties (Killed in War) Act, 1914.

FINANCE (No. 2) ACT, 1915.

[5 & 6 GEO. 5, c. 89.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [23rd December, 1915.]

PART IV.—GENERAL.

46. Section two of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

This section is dealt with under sect. 2 of the Death Duties (Killed in War) Act, 1914.

47. The Treasury may, if they think fit, during the continuance of the present war and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

The condition expressed in this section applies to the following securities :—

5 per cent. War Loan (1929–47); 4 per cent. War Loan (tax compounded) (1929–42); 5 per cent. Exchequer Bonds, 1919, 1920, 1921, and 1922; 6 per cent. Exchequer Bonds, 1920; 5½ per cent. Exchequer Bonds, 1925; 5 per cent. National War Bonds, 1st Series, 1922, 1924, and 1927; 4 per cent. National War Bonds, 1st Series (tax compounded), 1927; 5 per cent. National War Bonds, 2nd Series, 1923, 1925, and 1928; 4 per cent. National War Bonds, 2nd Series, 1928 (tax compounded); 5 per cent. National War Bonds, 3rd Series, 1923, 1925, and 1928; 4 per cent. National War Bonds, 3rd Series, 1928 (tax compounded); 4 per cent. National War Bonds, 4th Series, 1929 (tax compounded); 5 per cent. National War Bonds, 4th Series, 1924 and 1929; 4 per cent. Funding Loan (1960–90); 4 per cent. Victory Bonds.

Treasury Bills issued under Treasury Notice of the 9th March, 1916; War Expenditure Certificates issued under Treasury Notice of the 12th August, 1916; One Year 6 per cent. British Bonds issued to Swedish importers in part payment of goods; War Savings Certificates.

The expression "ordinarily resident" is used in the proviso to sect. 5 of the Finance Act, 1914 (4 & 5 Geo. 5, c. 10), in relation to income tax, and in sect. 1 (1) (a) and Sch. 1, par. 1 of the Military Service Act, 1916 (5 & 6 Geo. 5, c. 104); sect. 1 (1) of the Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), and Sch. 1, par. 1 of the Military Service (No. 2) Act, 1918 (8 Geo. 5, c. 5).

See the following cases decided under the Military Service Acts: *Rex* v. *Denham, Ex parte Staal*; *Pittar* v. *Richardson*; *Donne* v. *Letts*, and *Byrne* v. *Hedges*.

48. Where the holder of any Government stock dies, the production of probate, confirmation, or letters of administration granted by any court in the United Kingdom having authority to grant the same shall be sufficient authority to the Banks of England and Ireland, to the National Debt Commissioners, to the Postmaster General, and to any savings bank authority to transfer the stock to the person to whom the probate, confirmation, or letters of administration were granted, or as directed by that person.

The expression "Government stock" has the same meaning as in the Savings Bank Act, 1893, as amended by any subsequent enactment.

This section makes it no longer necessary to re-seal (say) an Irish grant in this country in order to obtain possession of Government Stock on an English Register.

Government Stock includes: $2\frac{1}{2}$ per cent. Consols; $2\frac{1}{2}$ and $2\frac{3}{4}$ per cent. Annuities; Local Loans 3 per cent. Stock; Irish Guaranteed $2\frac{3}{4}$ per cent. Land Stock (created under the Purchase of Land (Ireland) Act, 1891); Guaranteed $2\frac{3}{4}$ per cent. Stock (created under the Irish Land Act, 1903); Guaranteed 3 per cent. Stock (created under the Irish Land Acts, 1903 and 1909), and Stock issued under the War Loan Acts, 1914 to 1919.

51. . . .

(3) This Act may be cited as the Finance (No. 2) Act, 1915.

FINANCE ACT, 1916.

[6 & 7 Geo. 5, c. 24.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [19th July, 1916.]

Part IV.—National Debt and Loans.

63. Any securities issued in the United States of America by a municipal corporation, county council, or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury, shall not be liable to any taxation present or future, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

The expression "local authority" in this section includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purposes of this section by the Local Government Board.

Under this section the Metropolitan Water Board arranged for the issue in the United States of America by the Guaranty Trust Company of New York of yearling bills to the amount of $6,400,000. (See *The Times*, 1st September, 1916.)

The words "ordinarily resident" are also used in sect. 47 of the Finance (No. 2) Act, 1915.

67. Where any Government stock is transferred by virtue of section forty-eight of the Finance (No. 2) Act,

1915, on the authority of any probate, confirmation, or letters of administration, or by virtue of this Act on the authority of any order or decree of any court, the Bank of England or Ireland, the National Debt Commissioners, the Postmaster-General, or the savings bank authority, as the case may be, shall be indemnified and protected, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate, confirmation, or letters of administration, or of such order or decree.

This section has little bearing on the death duties.

PART V.—GENERAL.

69. . . .

(3) This Act may be cited as the Finance Act, 1916.

FINANCE ACT, 1917.

[7 & 8 Geo. 5, c. 31.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [2nd August, 1917.]

Part IV.—Death Duties.

29. Section fourteen of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, and section forty-six of the Finance (No. 2) Act, 1915, shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this Act, from causes arising out of the operations of the present war and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section fourteen, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

This section is retrospective, and is dealt with under the Death Duties (Killed in War) Act, 1914.

Part VI.—National Debt and Loans.

34.—(1) The Treasury may by regulations prescribe as securities to be accepted in payment of any death

duty or excess profits duty or munitions Exchequer payments any stock or bonds forming part of any issue made for raising money in connection with the present war, and any such regulations may specify different securities in respect of different duties and payments, and may prescribe the limitations and conditions subject to which any securities will be accepted, and any person from whom any sum is due on account of any death duty or excess profits duty or munitions Exchequer payments may pay that sum or any part thereof by means of the transfer, in accordance with and subject to the provisions of such regulations as aforesaid, to the Commissioners of Inland Revenue of an appropriate amount (ascertained as hereinafter mentioned) of any stock or bonds authorised by the regulations.

(2) Any stock or bonds so transferred shall be accepted by the Commissioners of Inland Revenue in satisfaction of the amount.

(3) Any stock or bonds so transferred shall be deemed to mature for payment on the date of the transfer, but the principal payable on maturity shall be deemed to be a sum equal to the price of issue, and the principal and interest of the stock or bonds when received by the Commissioners of Inland Revenue shall be brought to account as revenue in such manner as the Treasury may direct.

(4) Stock or bonds so transferred shall for the purposes of this section be valued at the price of issue with the addition of any interest accrued due at the date of transfer but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date:

Provided that in the case of excess profits duty and munitions Exchequer payments—

(a) if the transfer takes places after the date when the duty or payments become payable there shall be deducted from the value so attributed to the stock or bonds the amount of any

interest which accrued due on the stock or bonds after that date; and

(b) if the transfer takes place before that date, a sum equal to the value thereof so ascertained as aforesaid shall be deemed to be money deposited under section fifty-four of the Finance Act, 1916, and interest thereon shall be allowed in accordance with that section.

(5) For the purposes of this section interest shall be deemed to accrue from day to day.

(6) Section sixty-one of the Finance Act, 1916, is hereby repealed.

This section was amended by sect. 42 of the Finance Act, 1918, as follows:—

42. Section thirty-four of the Finance Act, 1917, shall have effect as though there were inserted therein after the words "price of issue" in sub-section (3) and sub-section (4) thereof the words "or such other price as was specified in the conditions subject to which the stock or bonds were issued as the price at which the stock or bonds were to be valued for the purposes of this section."

Regulations (see p. 607) have been made by the Treasury as follows:—

Date 13th August, 1918. St. R. & O., No. 1045.
„ 1st February, 1919. St. R. & O., No. 122.
„ 20th September, 1919. St. R. & O., No. 1353.

They may be obtained from His Majesty's Stationery Office, price 1*d.* each.

Part VII.—General.

38.—(1) . . . Part IV. of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1917.

FINANCE ACT, 1918.

[8 & 9 Geo. 5, c. 15.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [30th July, 1918.]

Part V.—General.

38.—(1) Where the Bank have reason to believe that any person in whose name any war stock of an amount not exceeding in the aggregate one hundred pounds in nominal value or in actual value, whichever is the less, is standing has died the Bank may, in such manner as may be prescribed by regulations made under section one of the War Loan (Supplemental Provisions) Act, 1915, transfer the stock from the books of the Bank to the Post Office Stock Register established under that Act, and may in such manner as may be so prescribed remit any dividends accrued thereon to the Postmaster General to be dealt with in the same manner as if the stock had been inscribed in the said register at the time when they accrued due.

(2) Where the Bank have reason to believe that any person in whose name any Government stock of a nominal amount not exceeding in the aggregate five hundred pounds is standing has died in actual military service, and that he was a person resident in some part of His Majesty's dominions outside the British Islands, the Bank may on an application in that behalf made under

this section by the proper authority and on an undertaking by the proper authority to answer for any death duties leviable in respect of the stock and any dividends accrued thereon, and to deal with the stock or the proceeds of sale thereof and any dividends thereon in accordance with the provisions of this section, hold the stock together with any dividends which have accrued, or which may thereafter accrue thereon at the disposal of the proper authority, and thereupon the stock shall become transferable by, and any dividends thereon shall become payable to, the proper authority as if that authority were the legal personal representative of the deceased person.

(3) Where any stock is transferred or where any dividends are remitted or paid under or in pursuance of this section, the transfer, remittance, or payment, as the case may be, shall be deemed to have been properly made and the Bank shall be discharged from all liability in respect of the stock transferred and the dividends remitted or paid.

(4) Where any stock is held at the disposal of or any dividends thereon are paid to the proper authority under or in pursuance of this section, that authority may, after making provision for the payment of any death duties leviable in respect of the stock and of the dividends, transfer the stock or any part of the stock to, or pay the proceeds of sale thereof or any part of those proceeds, to any person who, in the opinion of the proper authority, establishes a valid claim to the said stock or the proceeds of sale or any part thereof, and the receipt of any person to whom payment is made under or in pursuance of this subsection shall be a good discharge to the proper authority for the sum paid and any stock transferred to any person under or in pursuance of this subsection shall be deemed to have been properly transferred, and the proper authority shall be discharged from all liability in respect of the sum paid or the stock transferred.

(5) For the purposes of this section—

The expression "the Bank" means the Bank of England or the Bank of Ireland, as the case may be;

The expression "proper authority" means the High Commissioner or agent in London of the Dominion or Colony in which the deceased person was resident, or any other person recognised by the Treasury as being in relation to the deceased person the proper authority for the purposes of this section;

The expression "Government stock" means any stock or bonds which are for the time being transferable in the books of the Bank under the National Debt Act, 1870, or by deed under section seventeen of the Finance Act, 1911;

The expression "war stock" means any Government stock issued in connection with any loan raised for the purposes of the present war;

The expression "death duties" has the same meaning as in subsection (3) of section thirteen of the Finance Act, 1894;

A person shall be deemed to have died in actual military service if he was a person to whom at the time of his death the provisions of section eleven of the Wills Act, 1837, as amended by the Wills (Soldiers and Sailors) Act, 1918, applied or would have applied if he had been domiciled in England.

Sub-sect. (1) enables the Banks of England and Ireland to transfer, on the death of any person, sums of War Stock not exceeding 100*l.* in nominal or actual value (whichever is the less) to the Post Office Stock Register.

Sub-sect. (2) enables the same Banks to transfer Government Stock, not exceeding 500*l.* in nominal amount, standing in the name of a person who has died in actual military service, and who was resident in some part of His Majesty's Dominions outside the United Kingdom, to the High Commissioner or

Agent in London of the Dominion or Colony in which the deceased person was resident without the production of a grant of representation, subject to such High Commissioner or Agent undertaking to answer for any death duties leviable in respect of such stock.

Certain of the War Stocks are exempt from death duties on the deaths of persons not ordinarily resident in the United Kingdom. (See sect. 47 of the Finance Act, 1916.)

Sub-sect. (2) has been extended by the War Loan Act, 1919 (9 & 10 Geo. 5, c. 37), s. 5, to have effect as though the reference to His Majesty's Dominions included a reference to any territory under His Majesty's protection.

42. Section thirty-four of the Finance Act, 1917, shall have effect as though there were inserted therein after the words "price of issue," in subsection (3) and subsection (4) thereof, the words "or such other price as was specified in the conditions subject to which the stock or bonds were issued as the price at which the stock or bonds were to be valued for the purposes of this section."

See notes at sect. 34 of the Finance Act, 1917.

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war the relief from death duties given by section fourteen of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

This section is dealt with under the Death Duties (Killed in War) Act, 1914.

45. . . .

(3) This Act may be cited as the Finance Act, 1918.

FINANCE ACT, 1919.

[9 & 10 Geo. 5, c. 32.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and the National Debt, and to make further provisions in connection with Finance. [31st July, 1919.]

Part III.—Death Duties.

29. The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty:

Provided that, where an interest in expectancy within the meaning of Part I. of the Finance Act, 1894, in any property has, before the thirtieth day of April nineteen hundred and nineteen been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

The new scale applies to all estates "passing" on the deaths of persons dying on or after the 31st July, 1919.

The former scales are set out on pp. 264 to 267. Where the principal value of the estate does not exceed 15,000*l.* the rates are the same as in the Finance (1909–10) Act, 1910, and the Finance Act, 1914.

The proviso protecting mortgagees and purchasers is similar to the proviso to sect. 12 of the Finance Act, 1907, sect. 64 of the Finance (1909–10) Act, 1910, and sect. 16 of the Finance Act, 1914, on the occasions of former increases of rates. The notes under these sections explain the effect of the proviso.

30. Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.

See sect. 6 (6) of the Finance Act, 1894, and notes there.

The new rate operates in respect of all interest accruing due on or after the 31st July, 1919, and applies to Estate, Legacy, and Succession Duties.

It is conceived it also applies to the interest repayable under sect. 8 (12) of the Finance Act, 1894, and sect. 14 (b) of the Finance Act, 1914, although this point is not free from doubt. Commutations of duty and the discount allowable against Legacy and Succession Duties will be calculated at the like rate.

31. Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war, have effect and be deemed always to have had effect as though—

(a) three years were substituted for twelve months wherever that expression occurs; and

(b) in the said section fourteen the expression "wounds inflicted, accident occurring or disease contracted while on active service against an enemy" included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

This section is dealt with under the Death Duties (Killed in War) Act, 1914.

PART V.—GENERAL.

38.—(1) . . . Part III. of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1919.

SCHEDULES.

THIRD SCHEDULE

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per Cent. of
	£				£	
Exceeds	100	and does not exceed			500	1
,,	500	,,	,,		1,000	2
,,	1,000	,,	,,		5,000	3
,,	5 000	,,	,,		10,000	4
,,	10,000	,,	,,		15,000	5
,,	15,000	,,	,,		20,000	6
,,	20,000	,,	,,		25,000	7
,,	25,000	,,	,,		30,000	8
,,	30,000	,,	,,		40,000	9
,,	40,000	,,	,,		50,000	10
,,	50,000	,,	,,		60,000	11
,,	60,000	,,	,,		70,000	12
,,	70,000	,,	,,		90,000	13
,,	90,000	,,	,,		110,000	14
,,	110,000	,,	,,		130,000	15
,,	130,000	,,	,,		150,000	16
,,	150,000	,,	,,		175,000	17
,,	175,000	,,	,,		200,000	18
,,	200,000	,,	,,		225,000	19
,,	225,000	,,	,,		250,000	20
,,	250,000	,,	,,		300,000	21
,,	300,000	,,	,,		350,000	22
,,	350,000	,,	,,		400,000	23
,,	400,000	,,	,,		450,000	24
,,	450,000	,,	,,		500,000	25
,,	500,000	,,	,,		600,000	26
,,	600,000	,,	,,		800,000	27
,,	800,000	,,	,,		1,000,000	28
,,	1,000,000	,,	,,		1,250,000	30
,,	1,250,000	,,	,,		1,500,000	32
,,	1,500,000	,,	,,		2,000,000	35
,,	2,000,000	-	-	-	-	40

CHAPTER II.

Settlement Estate Duty.

Sections of the Finance Acts Relative to Settlement Estate Duty.

Finance Act, 1894 (57 & 58 *Vict. c.* 30).

5.—(1) Where property in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,

(a) a further Estate Duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(b) during the continuance of the settlement the Settlement Estate Duty shall not be payable more than once.

(4) Any person paying the Settlement Estate Duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

17.—The rate of the Settlement Estate Duty where the property is settled shall be one per cent.

* *Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate Duty and the Settlement Estate Duty shall be payable at the rate per cent. for the full sum of ten pounds.*

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* The words printed in italics were repealed by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 40, and Schedule, Part III.; and sect. 17 of that Act provided for the exclusion of any portion of 100*l.*, in excess of 100*l.* or of any multiple of 100*l.* from the value of the estate where the death took place on or after the 1st July, 1896, but sect. 17 of the Finance Act, 1896, was again repealed by the Finance Act, 1900 (63 & 64 Vict. c. 7), s. 18, and 2nd Schedule: "As respects persons dying after the passing of that Act," viz., on or after the 9th April, 1900, and sect. 13 (1) of that Act provided for the duty being assessed on the *net* value of the estate.

[Sub.-sects. 5 (1) and (4) and sect. 17 were repealed by sect. 18 (1) of the Finance Act, 1914.]

21.—(4) The Settlement Estate Duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

22.—(1) In this Part of this Act, unless the context otherwise requires:—

(h) The expression "settled property" means property comprised in a settlement; and

(i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust.

[The first four sub-sections of sect. 2 of the Settled Land Act, 1882, are set out on pp. 303 and 304.]

Finance Act, 1896 (59 & 60 *Vict. c.* 28).

19.—(1) The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

Finance Act, 1898 (61 & 62 *Vict. c.* 10).

*14. Where in the case of a death occurring after the commencement of this Act Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

Finance (1909–10) *Act*, 1910 (10 *Edw.* 7, *c.* 8).

54. . . . in the case of persons dying on or after the 30th day of April, 1909 . . . two per cent. shall be substituted for one per cent in sect. 17 of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of Settlement Estate Duty.

64. Where an interest in expectancy within the meaning of Part I. of the principal Act in any property has, before the 30th day of April, 1909, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that

* This section applies only if the deceased died on or after the 1st July, 1898.

property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Finance Act, 1914 (4 & 5 *Geo.* 5, *c.* 10).

14. . . . and Settlement Estate Duty shall not be levied in the case of persons dying after the 11th day of May, 1914:

Provided that—

. . . . . .

(b) on the first occasion on which Estate Duty becomes payable in respect of any property which would not have been payable but for this section, the amount of Settlement Estate Duty, if any, which has been paid in respect of that property, shall be allowed against the amount of Estate Duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of Settlement Estate Duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income.

Settlement Estate Duty is payable whenever (1) the property of the deceased is *settled* by his or her will on some person not competent to dispose thereof, except where the only life interest is that of the deceased's spouse (see sect. 5 (1), Finance Act, 1894); or (2) the property is *settled* by some other disposition, dated after the 1st August, 1894 (see sect. 21 (4) of Finance Act, 1894), so that such property passes under that disposition on the death of the deceased to some person who is not competent to dispose thereof, except where the only life interest is that of the deceased's spouse. (See sect. 5 (1), Finance Act, 1894.)

Where the deceased died prior to the 30th April, 1909, the rate of such duty is 1 per cent. (see sect. 17, Finance Act, 1894) on the principal value of the settled property. (See sect. 5 (1) (a), Finance Act, 1894.)

Where the deceased died on or after the 30th April, 1909, the rate of such duty is 2 per cent. (see sect. 54 of the 1910 Act), subject to the rights of purchasers and mortgagees of property

sold or mortgaged before the 30th April, 1909. (See sect. 64 of the 1910 Act.)

Where the deceased died after the 11th May, 1914, Settlement Estate Duty is not payable. (See sect. 14 of the Finance Act, 1914.)

The form for the payment of the Settlement Estate Duty is Form C-2 in duplicate. For the second or any subsequent instalment of Settlement Estate Duty where the same is payable by instalments the form is C-3.

It will be observed that sect. 58 (1) of the Settled Land Act, 1882, enumerates a number of limited owners (such as a tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event) who are to have the powers of a tenant for life when the estate of each of them is in possession, and sub-sect. 2 of that section enacts :—

"In every such case the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised."

It is thought, therefore, that this section enlarges the scope of sect. 2 of the Settled Land Act into which it is to be read, and that in any case where property stands limited for the time being to, or in trust for, persons successively on death, whether absolutely or contingently, and whether there is technically a life tenant or not, there is "settled property" for the purposes of the Finance Act, 1894.

Settlement Estate Duty is therefore thought to be payable in all cases where (apart from the express exemption) persons do or may take successively on death. In support of this view, see *Lord Advocate* v. *Stewart's Trustees*, 36 Sc. L. R. 297, where Lord M'Laren intimated that a settlement for the purposes of Estate Duty could be created by any device known to conveyancers by which the enjoyment of property *might* be had by different persons succeeding to the estate in their order.

In *Att.-Gen.* v. *Owen*, and *Att.-Gen.* v. *Coulson*, [1899] 2 Q. B. 253, Grantham, J., said the expression "property settled by the will of the deceased" as used in sect. 5 (1) of the 1894 Act meant property "which passes to some person not competent to dispose," and Kennedy, J., said the phrase "by way of succession" should be treated as equivalent to "successively on death."

Settlement Estate Duty will be considered with reference to—
A. Claims under the deceased's will; and
B. Claims under other dispositions.

A.—As to Settlement Estate Duty Payable under the Deceased's Will.

The simplest cases will be dealt with first.

Examples:—

1. The testator A. devised Blackacre to his daughter for life, remainder to her children in equal shares. Settlement Estate Duty is payable on Blackacre on A.'s death.
2. The testator A. devised Blackacre to his wife for life, remainder to his daughter for life, remainder to her children in equal shares. Settlement Estate Duty is payable on A.'s death. This example is given because so many solicitors seem to think that the Settlement Estate Duty is postponed, in such a case, until the death of the testator's widow. (See *Att.-Gen.* v. *Coulson*, and *Att.-Gen.* v. *Fairley*.)

The three following cases deal with Settlement Estate Duty on annuities:—

Att.-Gen. v. *Owen and others.*

A testatrix, after making certain specific bequests, bequeathed annuities to two persons for their lives, and directed that, to produce these annuities, sufficient capital sums should be set aside, and until set aside the annuities should be paid out of the income or capital of her residuary estate, and subject thereto bequeathed all the residue of her estate to her sons equally.

On her death the trustees set apart the capital necessary to produce the annuities.

The Crown claimed Settlement Estate Duty on such capital.

Held (by Grantham and Kennedy, JJ.) that such capital was "settled" property within the meaning of sect. 5 (1) of the Finance Act, 1894, and therefore Settlement Estate Duty was properly payable.

Att.-Gen. v. *Coulson and another.*

A testator, after certain pecuniary bequests, devised and bequeathed all his real and personal estate to trustees upon

trust for sale and for investment of the residue on trust to pay the income thereof to his widow for life, and after her death to pay out of income or capital annuities to his four daughters for their lives, and he directed his trustees, after the death of his wife and the respective deaths of his four daughters, to raise the four several sums of 9,000*l.*, 9,000*l.*, 6,000*l.*, and 6,000*l.*, each sum on the death of each daughter to be for the children of such daughter, and he directed the trustees to stand possessed of the residue of the trust funds in trust for his son absolutely. The testator died in 1895, leaving a widow and said four daughters.

Held (by Grantham and Kennedy, JJ.) Settlement Estate Duty was payable to the Crown on so much of the residuary estate as would provide the said four sums.

Both judges followed the judgment of Chitty, J., in *Re Mundy and Roper's Contract* as to the meaning of the words *settlement* and *settled*. In that case Chitty, J., said: "The right interpretation of the words 'stands for the time being limited to or in trust for any persons by way of succession' is a critical point in this case. The words have no technical force. I see no sufficient reason for restricting their meaning. I think that, according to the natural and ordinary meaning of the words, they include the case of a jointure and portions for younger children limited to arise on or after the death of a tenant for life, and the terms of years limited to trustees to secure them. The jointress and the portioners take an interest in the land, and they succeed to their interests in the land on or after the death of the tenant for life."

Re Campbell.

The facts were: Wm. Campbell, by his will, gave all his property to his executors on trust to convert it into money, and to set aside a sufficient amount of his residuary estate to provide for the payment of certain life annuities, and upon trust to divide the residue of his estate among certain persons.

He died in 1896, and his trustees invested 134,300*l.* in certain securities to meet the annuities, and the Commissioners of Inland Revenue claimed Settlement Estate Duty on so much of the residuary estate as was invested as aforesaid, and from the income of which the annuities were being paid.

The Court of Appeal (Collins, M. R., Stirling and Mathew, L. JJ.) held (affirming judgment of Kennedy and Phillimore, JJ., in the King's Bench Division) that such sum

stood limited to or in trust for persons by way of succession under the will, and that, therefore, Settlement Estate Duty was payable in respect thereof. *Att.-Gen.* v. *Owen* was approved.

A contingent settlement of property is a settlement of property within the meaning of sect. 5 (1). See

Att.-Gen. v. *Fairley and others.*

The facts are: A testator, John Fairley, devised his property to trustees to pay the income thereof to his wife during her life, and after her death to all his children, who being sons attain twenty-one, and daughters twenty-one or marry, in equal shares, and if there should be only one such child then in trust for that child, and he directed the share of each of his daughters should be held in trust for her for life, remainder to her children. The testator died 1895, leaving two sons and one daughter, all infants.

Held (by Williams and Kennedy, JJ.), there being an absolute settlement of the daughter's one-third, and a contingent settlement of the sons' two-thirds, there was a settlement of the whole within sect. 5 (1), and Settlement Estate Duty was payable. If in this case the death of the testator had been after 30th June, 1898, the Settlement Estate Duty on the sons' shares would be returnable on their respectively attaining twenty-one. (See sect. 14 of the Finance Act, 1898.)

Inland Revenue v. *Stewart's Trustees*, or *Lord Advocate* v. *Stewart's Trustees.*

The facts are as follow:—

By his trust disposition and settlement, dated 16th May, 1895, J. R. S. settled 50,000*l.* on each of his children, each share to be held in trust for such child for life, and then to his or her issue as therein mentioned, and in default as such child should absolutely appoint. The testator left a son and four daughters surviving him, all the daughters were married, but only one had issue. Settlement Estate Duty was claimed by the Crown on the five legacies.

The First Division of the Court of Session (Scotland) affirmed the judgment of the Lord Ordinary upholding the claim.

Att.-Gen. v. *Clarkson.*

John Peter Robinson (who died in 1895), by his will, bequeathed to his son D. 30,000*l.* to be paid to him if and when he

should attain twenty-five, with interest in the meantime, but if he should die under twenty-five to his issue, and if he should die under twenty-five without issue, to sink into and form part of testator's residuary estate, and he devised and bequeathed his residuary real and personal estate in trust for such of his seven children or reputed children (naming them) as being male should attain twenty-five, or being female should attain that age or marry, in equal shares, the share of any daughter to be held in trust for her for life, remainder (subject to her power to appoint a life interest to any husband she might leave) to her children as therein mentioned, and he declared if any son should die in his lifetime, without leaving a child, his share should be held in trust for testator's other children on the same trusts as their original shares.

The son D. was under the age of twenty-five at testator's death, but attained twenty-five in 1897. One of the seven reputed children died in testator's lifetime without attaining twenty-five. The other six were all living, but under twenty-five years of age, and one daughter had married since testator's death.

The Court of Appeal (Lindley, M. R., Jeune and Romer, L. JJ.) held that Settlement Estate Duty was leviable under sect. 5, sub-sect. 1 (a) of the Finance Act, 1894, on the 30,000*l.* and on the residuary estate as being contingently settled, following *Att.-Gen* v. *Fairley*. This affirmed the decision of Wills and Bruce, JJ., in the Queen's Bench Division.

If in this case the death of the testator had been after 30th June, 1898, the Settlement Estate Duty would be returnable if the contingent settlement never became an absolute one. (See sect. 14, Finance Act, 1898.)

In the following case there was a contingent settlement which failed, but the Settlement Estate Duty was not returnable, because the testator died before the 1st July 1898.

Watherston's Trustees v. *Lord Advocate.*

A testator, who died in 1895, and consequently before the Finance Act, 1898, directed his trustees to hold the residue of his estate for his daughter for life, and then for her children absolutely, and in default of children as she should absolutely appoint, and in default for her first cousins. On the death of the testator Estate Duty and Settlement Estate Duty were paid on the said residue. The daughter died unmarried about two years after the testator's death, and Estate Duty was claimed

and paid on the residue. The trustees claimed repayment of the amount paid as Settlement Estate Duty, on the ground that the residue was only contingently settled and the contingency had not happened.

It was held by the First Division of the Court of Session on the 1st February, 1901, that it was not repayable, there being no provision in the Finance Act, 1894, which could be construed as authorising such repayment, and sect. 14 of the Finance Act, 1898, being limited to the case of deaths after the commencement of that Act.

Lord Advocate v. *George Milne's Trustees and Executors.*

The testator died on the 2nd June, 1909, survived by his widow and several children all of age, leaving a trust disposition and settlement dated 20th December, 1895, and three codicils thereto dated 20th January, 1902, 18th June, 1904, and 28th March, 1907.

By the settlement itself he provided a life rent of the residue of his estate to his widow, and on the death of the survivor of himself and wife, he directed his trustees to hold the residue until his youngest child should attain majority, and on that event to divide it equally among his children, including a step-daughter. It was declared, should any child die without leaving lawful issue, the share of such child should accrue to the survivors, and in the event of any child dying leaving lawful issue, such issue were to be entitled to their deceased parents' share. By codicil of 20th January, 1902, the testator, after bequeathing a legacy of 100*l.* to his step-daughter, declared that the share of residue falling to her, as well as the legacy of 100*l.*, should be retained by the trustees, and the interest paid to her during her lifetime, and on her death the capital was to be paid to such of her children as might survive her.

The Crown claimed Settlement Estate Duty on the whole residue, on the ground that the vesting was suspended until the death of the widow, in which event, should the step-daughter be the sole survivor, she would be entitled to the life rent not only of her own share, but also of the shares bequeathed to the other children.

The Lord Ordinary (Lord Cullen), on the 25th January, 1912, in Scotland, gave judgment in favour of the Crown. He said (*inter alia*): "It was possible that none of the step-daughter's children might survive her, in which event it might

be that the fee would be held to have vested in the step-daughter subject to defeasance. It was unnecessary to express any opinion on that topic because, however it might stand, the fee of the step-daughter's share was settled on her surviving children at the expiry of her life rent, and there was thus a 'settlement' for persons by way of succession of such share within the meaning of sect. 5 of the Finance Act, 1894. The fact that the settlement was affected by contingency did not displace the Crown's claim; although, if in the event the settlement failed to become operative, there might be a claim for payment of the duty in virtue of sect. 14 of the Finance Act, 1898." His Lordship therefore seems to have been of the opinion that if a settlement fails to become operative by the happening of an event provided for by the disposition itself, so that the property (or some part thereof) cannot or does not pass, or be deemed to pass under the disposition on a subsequent death, a return of Settlement Estate Duty may fall to be made under sect. 14 of the Finance Act, 1898.

If a testator devises property to his daughter for life, with remainder to his widow for life, with remainder to the daughter in fee, the daughter is entitled in fee subject only to the widow's life interest if she survives the daughter, therefore Settlement Estate Duty is not payable. See

Lord Advocate v. *Wood's Trustees.*

In this case the testator directed his trustees to transfer and make over certain heritable property to his wife (so long as she should remain his widow) and to his daughter jointly, and to the survivor of them in life rent, and on the death of the wife to convey the property to the daughter for her own absolute use and behoof.

The Lord Ordinary held that Settlement Estate Duty was not exigible, in that the only life interest was that of the widow, the fee being in the daughter.

Annuities given "Simpliciter."

If an annuity is given "simpliciter," viz., charged on the *corpus* and income of property, and without any direction (1) that it should be paid out of the income only, or (2) that a capital should be set apart to meet it, it is thought that there is no "settled property" if the beneficiaries take absolutely subject to the annuity, and it is conceded in practice that

Settlement Estate Duty is not payable under such circumstances.

But if subject to such annuity the property is "settled" on a third person (not the deceased's spouse) for life, then since the property is "settled" within the meaning of sect. 5 (1) of the Finance Act, 1894, Settlement Estate Duty is payable on the whole property without any deduction for the annuity, because to deduct the capital value of the annuity from the principal value of the property would be in effect to throw the whole payment on the capital, which cannot be done, as between the tenant for life and remainderman. (See *Re Grant*, 52 L. J. Ch. 552; 48 L. T. 937.) It is conceived that under such circumstances, so long as the income of the property is sufficient to pay the annuity in full, it is not properly payable out of the *corpus*, and that the Court would not order a sale of the property until the annuity is actually in arrear. (See the arguments and judgment in *Re Tucker*, [1893] 2 Ch. 323.)

If an annuity is given "simpliciter," but with *power* to the trustees to either purchase the annuity or to set apart and invest a capital for the purpose of providing for the annuity out of the income thereof, and the trustees set apart such capital, Settlement Estate Duty is thought to be payable on such capital, because the enjoyment of the life interest by the annuitant depends on the will of the testator alone, all the trustees have to decide is, in what way that life interest is to be provided for, and they have decided it shall be provided in a manner which constitutes a settlement, but this view is not officially pressed.

Annuities Directed to be Paid out of Income.

Where the deceased gives an annuity to a legatee for life and *directs such annuity to be paid out of income* of the deceased's property, Settlement Estate Duty is payable on the proportionate part of the capital required to produce the annuity. This proportionate part is to be ascertained on the same principle as an addition to property under sect. 7 (7) (b) of the Finance Act, 1894. The property itself need not be settled.

The *direction* to pay out of income must be either explicit or by clear implication arising out of the general provisions of the will.

It will be gathered that any annuity that would have been liable to Settlement Estate Duty, if given "simpliciter," is *à fortiori* liable to Settlement Estate Duty if directed by implication or otherwise to be paid out of income.

The liability of annuities to Settlement Estate Duty may be summarised as follows:—

I. *Annuities liable to Settlement Estate Duty.*

(a) Annuities for which a capital sum is directed to be set apart.
(b) Annuities expressly directed to be paid out of income whether the property subject to the charge is or is not "settled."
(c) Annuities given "simpliciter" charged on property which, subject to the charge, is "settled," and there is a life interest other than that of the spouse of the testator.
(d) Annuities given "simpliciter," but with power to trustees to set aside capital to meet them where the power is exercised.

II. *Annuities not liable to Settlement Estate Duty.*

(a) Annuities given "simpliciter" charged on property which, subject to the charge, is "settled," but the only life interest is that of the spouse of the deceased.
(b) Similar annuities, but where the property subject to the charge is not "settled."

Disclaimer of Life Interest.

If the deceased devised property to a person (not his wife) for life, with remainder to another in fee, and such life tenant, before he receives any of the rents, disclaims his life interest so that such disclaimer operates as from the testator's death, then since the devisee in fee is competent to dispose as from the deceased's death, Settlement Estate Duty is not claimed on the property on the testator's death.

Determinable Life Interests.

Property is none the less settled, within sect. 5 (1), Finance Act, 1894, because the life interest of the successor may be determined by some event other than death.

Example:—

A. devised Blackacre to B. for life, or until his marriage, or his bankruptcy, or he ceases to reside in the mansion house, and then to C. in fee. Settlement Estate Duty is payable on A.'s death, but the duty would be returnable on the cesser of B.'s interest in his lifetime.

The settlement may also be determined by a power in the disposition; for instance, there may be a power to the *trustees* to advance capital to either the life tenant or the remainderman absolutely. Settlement Estate Duty is payable on the whole, but with a return, in the case of advances, of a proportion of the duty. But supposing a power is given to the actual succeeding life tenant to call upon the trustees to pay over the whole or a part of the capital to him or her absolutely. Settlement Estate Duty is not payable on the property to which such power applies, because the successor is competent to dispose thereof.

And the result is the same if the *trustees* are empowered at the *request* of the *tenant for life* to pay over the whole or a part of the capital to him.

Where the Deceased's Will is in Exercise of a Power.

I. *Where the power is limited.*—If the power arose under a disposition which took effect before the 2nd August, 1894, and the deceased exercises the power so as to create a settlement, the deceased's will is to be read into the disposition creating the power, with the result that the property which passed on the death of the tenant for life is held to be "settled" by the earlier disposition and not by the deceased's will, and accordingly to be exempt from Settlement Estate Duty under sect. 21 (4).

Examples:—

1. A., by marriage settlement of 1884, settled 10,000*l.* on himself for life (died 1905), and then to his children as he should by deed or will appoint. A. appoints by his will to his eldest daughter for life, and then to his second daughter absolutely. Settlement Estate Duty is not payable on A.'s death.
2. Supposing in last example A.'s marriage settlement to have been dated 1895, Settlement Estate Duty would have been payable on A.'s death.

II. *Where the power is a general or absolute one.*—If the remainder over in the event of the deceased not exercising the power of appointment is to the deceased absolutely or in fee, so that in any event the property would have been his absolutely, the power is considered to be superabundant and unnecessary, and the property is treated as the deceased's free estate. If, however, the remainder over is to a third person, then the relief afforded by sect. 21 (4) of the 1894 Act does not apply in cases where the deceased has shown an intention to make the appointed

property his own for all purposes, and so available for the satisfaction of his debts, notwithstanding that the disposition creating the power is dated prior to the 2nd August, 1894. (See *Re Hoskin's Trusts*, 5 Ch. D. 229; 6 Ch. D. 281; *Re Van Hagan*, 16 Ch. D. 18; and *Re Hadley*.)

In cases where the appointor by his will shows an intention *not* to defeat the interests of the persons entitled in remainder under the old disposition in default of the exercise of the power of appointment, Settlement Estate Duty is not payable if the power was created by a disposition taking effect prior to the 2nd August, 1894. The appointment is to be read into the instrument creating the power, and sect. 21 (4) of the 1894 Act is considered to apply.

Examples :—

1. A., testator (died 1892), devised Blackacre to B. for life, remainder as B. should absolutely by will appoint, in default to C. in fee. B. died 1906, having appointed to D. for life, remainder to E. in fee. Settlement Estate Duty is payable on B.'s death.
2. Facts as in example 1, but B. declares by his will that if D. and E. predecease him, then Blackacre shall pass as in default of appointment. No Settlement Estate Duty is payable, since B. has not shown an intention to make the property his own for all purposes.
3. Facts as in example 1, but A. died in 1895. No Settlement Estate Duty is payable on A.'s death, because B. is competent to dispose.

   But Settlement Estate Duty is payable on B.'s death, because his will creates a settlement within the meaning of sect. 5 (1), Finance Act, 1894, and even if read into A.'s will, the settlement took effect after the 1st August, 1894.

Foreign Domicile of a Testator.

Effect on the Settlement Estate Duty on his English Assets.

Where the deceased died domiciled abroad leaving assets situate in the United Kingdom and abroad, and bequeathed legacies payable out of his general estate, and directed one of such legacies to be settled on his daughter for life, and then to her children, Settlement Estate Duty is payable on so much of the settled legacy as actually falls to be paid out of the

assets in the United Kingdom. The executor of the deceased can apparently (apart from any direction in the will to the contrary) satisfy the legacies out of such part of the deceased's personal estate as he may desire, and there appears to be no rule of law requiring him to make every payment rateably out of the British and foreign assets.

Lord Herschell, in his judgment in *Lord Sudeley* v. *Att.-Gen.*, quoted, with apparent approval, the argument of the appellant's counsel that an executor "has the right not only to choose and select what assets he shall use for the purpose of paying debts, but also to determine the way of administration by arrangement with the legatees as to what portion of the estate shall go to this or that legatee."

If, therefore, the settled legacy is paid entirely out of foreign assets, Settlement Estate Duty is not payable.

Example :—

A., who died in 1912, domiciled in Victoria, possessed of 200,000*l.* net personal estate in Victoria and 20,000*l.* in Consols, appointed executors in London, and after bequeathing certain absolute legacies, bequeathed one-fifth of his residuary estate in trust for his daughter B. for life, and then to her children, and the remaining four-fifths to his four sons in equal shares. If the executors satisfy the settled one-fifth entirely out of the assets in Victoria, Settlement Estate Duty is not payable.

Gifts to Two or more Persons for Lives with an Absolute Gift to the Survivor.

If property is devised to two persons for their joint lives, with remainder to the survivor in fee, it is clear that half will ultimately vest absolutely in the life renter of such half, and that though the whole may be said to be contingently settled, half the duty would be returnable on the death of the first to die. It is the practice of the office, therefore, to accept Settlemant Estate Duty on one-half, and so close the matter with the least trouble to all concerned. Likewise, if the limitation is to three persons for lives, with an ultimate remainder to the survivor, Settlement Estate Duty is accepted on two-thirds, if to four, Settlement Estate Duty on three-fourths, and so on. The case is treated in the same manner if the survivor has an absolute power of appointment only and does not take absolutely.

Gift to apply Income to a Person during Minority or other Period, and then Capital to the same Person, if alive, with a Gift Over in Default to other Persons absolutely.

When a testator bequeaths his residuary estate to his widow for life, and then to his daughters who should attain twenty-five or marry under that age in equal shares, and in default to his sons absolutely, and the will contained a provision that every daughter who should attain twenty-one years should be entitled to receive the income of her share until the same should have become absolutely vested or she should previously die, Settlement Estate Duty is payable on the shares of the daughters who are under twenty-five years of age at the testator's death, because in addition to the wife's life interest, any daughter might (by attaining twenty-one and dying a spinster under twenty-five) enjoy a subsequent life estate. Settlement Estate Duty is thought to be payable in such cases whether the gift to the daughter is preceded by a life estate to the widow or not. (See notes on p. 471.)

If, however, there is only a power (not an absolute direction) to the trustees to apply the whole or part of the income for the daughters on attaining twenty-one years, it is conceded that Settlement Estate Duty is not payable.

Gifts for Life with Superadded General Power of Appointment.

Where the deceased gave property to his spouse for life, and then to some other person for life, with remainder as such other person should absolutely by deed or will appoint, Settlement Estate Duty is considered not to be payable on the death of the deceased.

If the life interest to the donee of the power is not preceded by a life interest to the deceased's spouse, but is immediate, it is, of course, clear Settlement Estate Duty is not payable on the deceased's death.

But if the donee has power to appoint by will only and not by deed, and he releases the power during his life (see notes on pp. 112 and 285), so that he was not competent to dispose at his death and never had been competent to dispose during his life, Settlement Estate Duty is (it is thought) payable as on the testator's death.

If, however, the donee of a power to appoint by deed or will should subsequently exercise the power, whether by disposition *inter vivos* or by will, in such a way that upon his or her death

the appointed property then stands limited to or in trust for persons by way of succession (the life tenant not being the donee's spouse), Settlement Estate Duty will be payable in connection with the death of the donee of the power. (See Example 1, p. 481.)

Supposing the donee of the power dies without exercising the power, but the property then stands limited to persons by way of succession under the original disposition, Settlement Estate Duty will be payable on the death of the donee. This will not apply, of course, if the only life tenant is the spouse of the donee.

Power to Persons to create Interests by way of Succession.

It is not considered that a claim for Settlement Estate Duty can arise on the death of a deceased person merely because he gives a power to someone to create a settlement.

Examples :—

1. A. bequeaths 10,000*l.* to his wife B. for life, with remainder to his issue as she should appoint, and A. has a daughter C., to whom B. may appoint for life, with remainder to her children who attain twenty-one.
2. A. bequeaths 10,000*l.* to trustees in trust for his widow B. for life, and then to his children who, being sons, attain twenty-one, and daughters who attain twenty-one or marry, in equal shares, and he empowers his trustees in their absolute discretion to settle the share of any daughter on her for life, and then for her children.
3. A. devises Blackacre to his widow for life, remainder to his first son in tail male, and he empowers his widow to appoint, so as to take effect after her death, a life estate to her father.

Settlement Estate Duty is not payable on A.'s death in any of the above three examples.

Gifts in Tail.

Where, by the will of the deceased, property is given immediately to the spouse for life, with remainder to another person in tail, with remainder to a third person for life, Settlement Estate Duty is payable on the testator's death.

Where, under "the will of the deceased," the devise in tail is not preceded as above mentioned by a life interest to the

deceased's spouse, but is immediate, Settlement Estate Duty is not payable on the deceased's death whatever the limitations may be that follow the devise in tail, and whether the tenant in tail is or is not *sui juris*. A tenant in tail who is not *sui juris* is (notwithstanding sect. 13 of the Finance Act, 1898) a person "competent to dispose," within the meaning of sect. 5 (1) of the Finance Act, 1894, by force of sect. 22 (2) (a).

Where a testator dying after the 1st August, 1894, devises real estate to a tenant in tail who dies without having disentailed, and the property then stands limited to or in trust for persons by way of succession, Settlement Estate Duty is payable in connection with the death of the tenant in tail, provided he was or had been *sui juris*, except of course where the only life tenant, after the death of the tenant in tail, is his or her spouse.

If such tenant in tail was not at his death and never had been *sui juris*, of course Estate Duty would not (neither would Settlement Estate Duty) be payable on his death. (See sect. 5 (2) of the Finance Act, 1894, as amended by sect. 13 of the Finance Act, 1898.) See, however, sect. 14 of the Finance Act, 1914, if the death is after the 15th August, 1914.

Gifts in Fee or Absolutely with Executory Gift Over.

It would appear that a gift to a person in fee or absolutely with an executory gift over in certain events, *none of which depend on death*, strictly creates a "settlement" within the meaning of sect. 2 of the Settled Land Act, 1882, as explained by sect. 58 of that Act, and that the property subject to such a gift is therefore "settled property" within the meaning of sect. 22 (h) and (i) of the Finance Act, 1894, but it is conceded that Settlement Estate Duty is not payable under such circumstances.

If, however, the gift over *may depend upon a death*, having regard to the meaning of the words "settled property" set out on pp. 470 and 471, Settlement Estate Duty is considered to be payable.

Examples :—

1. A. (died 1911) devised Blackacre to B. in fee, but if he should cease to reside in England, to C. in fee. Settlement Estate Duty is not payable.
2. A. (died 1912) devised Blackacre to B. (aged seventeen) in fee on his attaining twenty-five, or at some future time with the whole income meantime, but should he

die before that age or time, to C. in fee. Settlement Estate Duty is payable on Blackacre. If, however, there is only a *power* to the trustees to apply part or the whole of the income meantime for B., it is considered that Settlement Estate Duty is not payable unless the remainder over is to C. for life.

In any case if the defeasible estate or interest is followed by limitations under which a life interest is given to some third person (not the deceased's spouse), Settlement Estate Duty is payable.

Discretionary Trusts.

If property is limited to trustees during the life of a person (not the deceased's spouse) on trust to apply the *whole income* for the benefit of that person, his or her spouse and issue, or some or one of them (in the discretion of the trustees), and on the death of that person to his or her children, Settlement Estate Duty is thought to be payable.

If, however, the trustees have power to apply the whole *or only part* of the income, it seems to be doubtful whether the property is "settled," and therefore liable to Settlement Estate Duty. Prior to the Finance Act, 1914, it was the practice to allow the accountable parties to treat the property as "settled" and pay Settlement Estate Duty and so avoid the payment of Estate Duty on the death of the *cestui que vie*, but as sect. 14 of the Finance Act, 1914, abolished the exemption from a further Estate Duty conferred by sect 5 (2) of the Finance Act, 1894, in respect of "settled" property that had borne Estate Duty, this will not be an advantage to the taxpayer, and it is conceived, therefore, that Settlement Estate Duty will not now be claimed in such circumstances where the deceased died prior to the 12th May, 1919.

"Foreign Assets."

Foreign assets settled by the deceased's will are liable to Settlement Estate Duty if the deceased died domiciled in the United Kingdom, even though they do not come into the hands of the British executors. See

Re Consuelo Duchess of Manchester, Duncannon v. *Manchester.*

Consuelo Duchess of Manchester died on 20th November, 1909, domiciled in England, possessed of personal estate in

England and America, and having appointed English executors and trustees, and also having appointed three American gentlemen executors as to her property in America. A question arose as to whether the English executors were liable for the payment of Estate Duty on American assets. (See p. 519 for the decision of the Court on this point.)

A further question arose as to whether the English executors were liable for the Settlement Estate Duty on the American assets. It was contended on their behalf that they were not liable unless and until they had received the property out of which it was payable.

Swinfen Eady, J., on 20th February, 1912, gave judgment in favour of the Crown. In his judgment he said the contention was that, having regard to the true construction of sect. 19 of the Act of 1896, Settlement Estate Duty was payable only out of settled property, not payable out of English assets so far as received by the English executors. It was not disputed that, but for the amending Act of 1896, it would have been payable. The Acts must, of course, be construed together. The earlier Act imposed Estate Duty which was to be levied and paid on all property passing on the death. Additional duty, called Settlement Estate Duty, was imposed by sect. 5. That was also an Estate Duty. By sect. 6 (2) the executor was to pay the Estate Duty (which included Settlement Estate Duty) in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death. That was this case.

By sect. 8 (3) the executor was to render an account. By sect. 9 (4) a rateable part of the duty paid in respect of such property was to be repaid in certain cases by the trustees or owners to the executor. Down to that it was clear that the executor was liable to pay Settlement Estate Duty on the American assets, and was entitled, under sect. 9 (4), to recover a rateable part of it. In *Re Webber*, it was held that Settlement Estate Duty came out of the general estate, but in *Re Maryon-Wilson* that was then held to be a mistake, and the Act of 1896 had corrected it. Sect. 19 made it payable out of the settled property. It had reference to all settled property wherever situate. Unless the will had express provision to the contrary, it was to be paid out of the settled fund in exoneration of the rest of the deceased's estate. The whole section pointed out the ultimate liability of the duty as between the beneficiaries. In place of the will it said how it was to be borne, but it could not, of course, affect the Crown. It was

payable by one part of the estate in a due course of administration.

In his Lordship's opinion that sub-section merely corrected the mistake which had been made in the interpretation of the earlier Act. That is how it was put by the Master of the Rolls in *Re Maryon-Wilson*. Then it was urged that sub-sect. 2 made the matter clear, because it provided that the duty was to be collected on an account. It might well be that that supplied a defect in the earlier Act. There might be voluntary debts which, in ascertaining the share of the duty, would have to be taken into account. The true effect of sect. 19 was that it merely regulated the incidence of the Settlement Estate Duty as between the beneficiaries, and provided a more convenient mode of collection on the account delivered by the executor.

Taking all things together, the executors were liable for Settlement Estate Duty, and they were bound to pay to the extent of assets received, or which, but for their wilful neglect or default, they might have received. In the circumstances his Lordship determined that Settlement Estate Duty in respect of the American assets must be borne and paid by the English executors, their liability being limited to the amount they received.

A discussion then ensued as to the liability for Legacy Duty on the American assets, as to the duties on annuities left free or not free of duty, and other points.

Swinfen Eady, J., said that the better plan would be to provide for the payment of the duties. All moneys which came into this country forming part of the American estate would be liable to be first intercepted for the payment of duties which ought to be paid. Subject to that general expression of opinion the consideration of the rest of the summons would be referred to chambers.

A similar case was decided in the Scotch Courts on behalf of the Crown. (See *Lord Advocate* v. *Douglas's Executors*, p. 518.)

B.—Settlement Estate Duty under Dispositions other than the Deceased's Will.

In order that Settlement Estate Duty should be chargeable under a deed, two things are essential:—

(1) That the disposition should not have taken effect before the 1st August, 1894. (See sect. 21 (4), Finance Act, 1894.)

(2) That the property should pass on the deceased's death under that disposition to some person (other than the deceased's spouse) who is not competent to dispose thereof. (See sect. 5 (1), Finance Act, 1894.) The *ad valorem* Stamp Duty (if any) charged on the settlement in respect of that property may be deducted from the Settlement Estate Duty. (See sect. 5 (4), Finance Act, 1894.)

This duty is the five shillings per cent. duty imposed on *personal* property in a settlement by the Stamp Act, 1891 (54 & 55 Vict. c. 39), or if the settlement is executed on or after the 29th April, 1910, and is not a marriage settlement or a conveyance for value, 1*l.* per cent. on real and personal property. (See sect. 74 of the 1910 Act.) There was no *ad valorem* Stamp Duty payable on a settlement of real estate until the 1910 Act.

Example :—

By settlement of 1896, A. settled 2,000*l.* on himself for life (died 1906), then to his daughter B. for life, and then to her children in equal shares. Settlement Estate Duty is payable on the 2,000*l.* – 60*l.* (Estate Duty on A.'s death), viz. 1,940*l.* = 19*l.* 8*s.*, and the 2*l.* 10*s.* Stamp Duty on the settlement may be deducted therefrom = 16*l.* 18*s.* net. If the settlement had been dated prior to the 2nd August, 1894, Settlement Estate Duty would not have been payable. If A. had died on or after the 29th April, 1909, the Settlement Estate Duty would have been at 2 per cent.

The notes on annuity, p. 479; disclaimer of life interest, p. 479; determinable life interests, p. 479; gifts to two or more persons for lives, with an absolute gift to the survivor, p. 482; gift to apply income to a person during minority, &c., p. 483; gifts for life with superadded general power of appointment, p. 483; gifts in tail, p. 484; gifts in fee or absolutely with executory gift over, p. 485; and discretionary trusts, p. 486, will apply whether those conditions or limitations arise under the deceased's will, or under a deed provided the latter did not take effect prior to 2nd August, 1894.

Covenants to Pay on a Death.

Where the deceased covenanted, by a deed dated *after* the 1st August, 1894, that his executors or administrators should pay a sum to the trustees of the settlement to be held by them in

trust for persons (the life tenant not being the deceased's spouse) by way of succession, the covenanted sum pays Estate Duty by being disallowed as a deduction against the covenantor's estate. Under these circumstances Settlement Estate Duty is considered to be payable on the covenanted sum even if the deceased also covenanted to pay an annuity from the date of the deed to the date of his death. (See *H.M. Advocate* v. *Heywood-Lonsdale's Trustees* (10,000*l. action*), p. 40.)

If the deceased had agreed to pay INTEREST (not a mere annuity) on the capital sum from the date of the deed to his death, the payment of the capital sum (although not deductible against the deceased's estate) is regarded as a mere change of investment and Settlement Estate Duty is not payable.

If the covenant was by a deed dated *before* the 2nd August, 1894, Settlement Estate Duty is not payable, although neither an annuity nor interest is payable meantime because of sect. 21 (4) of the Finance Act, 1894.

If the deceased covenanted, by a deed dated after the 1st August, 1894, that his executors or administrators should pay a sum of money to the trustees of a settlement upon an event which has not occurred at the time of his death, to be held by them in trust for persons (the life tenant not being deceased's spouse) by way of succession, Settlement Estate Duty is not payable on such sum because it did not *pass* on the deceased's death under such settlement.

Example :—

A. died 1903, bequeathing all his property to his wife B. for life (living), and having, by marriage settlement, dated in 1901, of his daughter C., covenanted that his executors or administrators should pay, on the death of the survivor of himself and his wife B., 1,000*l.* to the trustees to be held in trust for C. for life, and then for her husband and children, no deduction can be claimed against Estate Duty payable on A.'s death in respect of said 1,000*l.*, but Settlement Estate Duty is not payable.

Covenants to Bequeath a Share of Residue.

Again, if the deceased covenanted, by a deed dated after the 1st August, 1894, to bequeath an aliquot share of his residuary estate to trustees to be held by them in trust for persons by way of succession, Settlement Estate Duty is payable on such share.

In the last case Settlement Estate Duty is payable although the covenant to bequeath the share is dated prior to the 2nd August, 1894, because the settlement, even if it is considered to be created by the covenant, does not *take effect* until *after* the date of the Finance Act. It is unnecessary, therefore, to consider which instrument creates the settlement, since either way sect. 21 (4) is not complied with.

The result is the same whether the deceased covenants to bequeath to the trustees to vest in them in possession at the covenantor's death or at some future period, for instance, at the death or re-marriage of his widow, because the covenant did not constitute a settlement of the property either in law or equity, but such share only became "settled property" when the will became effective by the death of the testator, and since the property settled cannot be ascertained or transferred to the trustees until after the covenantor's death, the settlement, even if created by the covenant, did not take effect until after the 1st August, 1894, therefore sect. 21 (4) of the Finance Act, 1894, provides no reason for exemption from Settlement Estate Duty.

Example:—

A., by settlements of 1st January, 1893, and 1st January, 1896, covenanted to bequeath to the trustees of each of the settlements—

(a) One-tenth of his residuary estate to vest in possession at his death; and

(b) One-tenth of his residuary estate to vest in possession at the death of his widow B. (who died 1912),

to be held by the trustees in trust for his son C. for life (living 1913), then for D. (wife of C.) for life, and then for their children in equal shares.

A. died in 1911, and bequeathed shares to the trustees in accordance with his covenants. Settlement Estate Duty is payable on A.'s death on four-tenths of his residuary estate.

It will be observed a distinction is made between a covenant to pay a sum of money on a future event and a covenant to bequeath a share of residue on a future event.

Covenant in a Settlement to Settle After-acquired Property.

Where a testator, dying after the 1st August, 1894, devise or bequeaths property to his spouse for life, and then to a

person in fee or absolutely, and such devisee or legatee has, by a settlement dated before or after the 1st August, 1894, covenanted to settle all after-acquired property on the trusts therein contained, so that the devised or bequeathed property is caught by such covenant and is held in trust for persons by way of succession, it is now considered that Settlement Estate Duty is not payable thereon, because by sect. 5 (1) of the Finance Act, 1894, the settlement must be ascribed either to the deceased's will *or* to some other disposition, and it is not enough to ascribe it to the will *and* some other disposition. The only life interest created by the will is that of the widow, and the property does not *pass* under the reversioner's settlement on the deceased's death.

Example :—

1. A. died 1st June, 1906, having bequeathed 1,000*l.* to his widow for life, and then to his daughter B. absolutely. B., by her marriage settlement of 1886, covenanted to settle all her after-acquired property on trust for herself for life, and then to her husband for life, then to her children. Settlement Estate Duty is not payable on such 1,000*l.* on A.'s death.

If a deceased person, dying after the 1st August, 1894, devises or bequeaths property to a devisee or legatee absolutely (without the intervention of any prior life interest), and such devisee or legatee has, by a settlement dated after the 1st August, 1894, covenanted to settle all after-acquired property on himself for life, with remainders over to others, the property is not liable to Settlement Estate Duty because it is not settled by the will of the deceased, and although it may be settled by reason of the covenant, still it does not pass *on the deceased's death under* the settlement.

Example :—

2. A., who died 1907, bequeathed 1,000*l.* to his daughter B. absolutely. B., by marriage settlement of 5th January, 1903, covenanted to settle all after-acquired property on trust for herself for life, &c., as in example above. Settlement Estate Duty is not payable on the 1,000*l.* on A.'s death.

The two examples, 1 and 2, are given because it was formerly thought that Settlement Estate Duty was payable in example 1, since the property was "settled" by the will and (by reason of the property being caught by the covenant in the settlement

to settle after-acquired property) the life interest of the testator's spouse was not the only life interest, whereas Settlement Estate Duty was never considered to be payable in example 2.

Gift by way of Settlement within Twelve Months (now Three Years) of Death.

Where the deceased, within twelve months (three years if the death is on or after 30th April, 1909) of his or her death, settles property so that on his or her death it stands limited to or in trust for persons by way of succession, Settlement Estate Duty is not payable thereon.

It was decided that it was payable in the cases of *In re Bayly (deceased)*; *Att.-Gen.* v. *Smyth* (see p. 39); and *Inland Revenue* v. *Heywood-Lonsdale's Trustees* (5,000*l. action*), p. 41; but the opposite view was taken in

Att.-Gen. v. *Milne.*

By a voluntary settlement dated the 20th May, 1909, which was executed less than three years before the death of the settlor, and in which the settlor retained no benefit, he, as the owner of certain property, settled the same upon his son (who survived him) for life, and other persons after his death. On the settlor's death Estate Duty was admittedly leviable under sect. 2, sub-sect. 1 (c), of the Act of 1894, as amended by sect. 59 (1) of the 1910 Act, and such duty was paid in respect thereof upon the death of the settlor. It was contended on behalf of the Crown that the effect of sect. 5 (1) of the 1894 Act was to make the settled property subject also to Settlement Estate Duty.

It was decided (by Horridge, J.) that the settled property was property which, by virtue of sect. 2, sub-sect. (c), of the Act of 1894, as amended, was deemed to have passed on the death of the deceased; that it passed "under that disposition on the death of the deceased" within the meaning of sect. 5; and that, therefore, Settlement Estate Duty was payable in respect thereof. On appeal:

Held (by Cozens-Hardy, M. R., Buckley and Kennedy, L. JJ., on 8th May, 1913) that the property did not pass under a disposition on the death of the deceased, but rather more than eighteen months before the death of the deceased to a person not competent to dispose of the property, viz., the son of the settlor as tenant for life; and that the facts did not bring the

case within the operation of sect. 5 (1) of the Act of 1894. Appeal allowed.

The House of Lords (Lord Haldane, L. C., with Lords Atkinson and Parker of Waddington, Lord Dunedin dissenting) on the 7th April, 1914, affirmed the judgment of the Court of Appeal that Settlement Estate Duty was not payable.

Value for Settlement Estate Duty.

The value is to be ascertained as at the date of the death of the person on whose decease the claim for duty arose. (See sects. 5 (1) and 7 (5) of the Finance Act, 1894.)

Therefore, where the deceased bequeathed his residuary estate to his widow for life, and on her death a legacy to his son for life, and subject thereto to others, and at the date of the deceased's death the legacy had to abate, but on the death of the widow it was found that owing to advantageous sales of the testator's property the legacy was enabled to be paid in full, Settlement Estate Duty is payable only on the abated legacy, such being the value of the testator's death.

If an annuity is given simpliciter, but the residue is settled, then Settlement Estate Duty is payable on the whole of the residue without any deduction for the value of the annuity.

Example:—

Testator, A. (died 1906), devised and bequeathed his real estate and residuary personal estate to trustees to sell and pay 50*l.* per annum to his daughter B. for life, and subject thereto to hold same in trust for his daughter C. for life, and then for her children equally.

Settlement Estate Duty is payable on the whole of the residue without any deduction in respect of the said 50*l.* annuity.

If the Estate Duty is a charge on or properly payable out of the "settled property," it may be deducted from the value of such property before the Settlement Estate Duty is payable, but as the Settlement Estate Duty is a further Estate Duty, the Settlement Estate Duty is payable on the value of the property without any deduction for Legacy or Succession Duty.

The Settlement Estate Duty may be deducted from the value of the "settled property" before the latter duties are payable in the manner set out on pp. 503 and 504.

Interests in Expectancy.

If the deceased died possessed of a reversion, and he bequeaths it so as to create a settlement (on someone other than his spouse) within the meaning of sect. 5 (1) of the Finance Act, 1894, Settlement Estate Duty is payable on such reversion; such duty may be paid either whilst the property is in reversion on its reversionary value, or may be postponed until the property falls into possession, when the duty will be on the then value as a fund in possession.

Settlement Estate Duty follows the Estate Duty, therefore if Estate Duty is paid on the property whilst in reversion, the Settlement Estate Duty must also be so paid, and cannot be postponed until the property falls into possession.

Supposing the deceased had, by a settlement dated before the Finance Act, 1894, charged his property with a jointure to his widow for life, to commence on his death, and had, by his will, settled such property subject to the jointure, Settlement Estate Duty is payable on the property without deduction for the jointure.

Again, if the deceased had, by a disposition dated before the Finance Act, 1894, settled the property on himself for life, with remainder to his widow or other person for life, remainder to himself in fee, and by his will he had devised the property (subject to such life interest) to persons by way of succession, Settlement Estate Duty is payable on the value of the reversion. Payment of the Settlement Estate Duty may be deferred until the reversion falls into possession. In such case the Settlement Estate Duty will be payable on the value as in possession.

Return of Settlement Estate Duty if the Settlement Fails.

The "absolute" character of a settlement *does not depend upon the actual enjoyment* of the property by persons taking successive interests, but upon *how the property stands limited* by the disposition at the time of the death, giving rise to the claim for Estate Duty.

Therefore, if the deceased bequeathed his property to his widow for life, and then to his daughter for life, remainder to her husband for life, then to her possible children, and in default to her absolutely, the property is absolutely settled, and there is some doubt as to whether there should be a return of Settlement Estate Duty under sect. 14 of the 1898 Act if the daughter

and her husband should both die without issue in the widow's lifetime.

But since a taxing Act is to be construed strictly, it would seem to follow that an exempting Act should receive a broad and generous interpretation, otherwise, by narrowing the exemptions, taxation would result in cases not strictly intended. Sect. 14 of the Finance Act, 1898, therefore receives the widest interpretation, and if, by the happening of an event provided for by the disposition itself or by virtue of sect. 5 (3) of the Finance Act, 1894, the property or some part thereof cannot or does not pass or cannot be deemed to pass on any subsequent death, the Settlement Estate Duty or an appropriate part of it is returned thereunder. (See the note on *Lord Advocate* v. *George Milne's Trustees*, on p. 476.)

If the deceased bequeaths property to his daughter (a spinster) for life, with remainder to her children equally, and failing children to her absolutely, this creates a contingent settlement only, and if the daughter should die without ever having had children, the Settlement Estate Duty will be returnable under sect. 14 of the Finance Act, 1898.

Again, property limited to A. for life, with remainder to B., is absolutely settled, notwithstanding there is power to the trustees to destroy the settlement by advancing the capital to A.

A settlement is none the less an absolute one because the interest of the life tenant may be determined by some event other than death, such as marriage, bankruptcy, &c.

However, in all the above cases, if the property fails to pass on a subsequent death, it is considered that the Settlement Estate Duty is returnable.

Sect. 14 of the Finance Act, 1898, does not authorise the return of interest on the Settlement Estate Duty, and as the duty should be paid immediately after the death in the case of personal estate, and at the expiration of a year from the death in the case of real estate, the interest paid by reason of the duty being in arrear is not returnable. (See, however, p. 438 as to when interest is repayable.)

Out of what Property is Settlement Estate Duty Payable.

I. *If the property is settled by the deceased's will.*

It was held (by North, J.) in *Re Webber*, *Gribble* v. *Webber*, that Settlement Estate Duty in respect of settled legacies and shares of residue was payable out of the unsettled residuary

estate, but this was altered by sect. 19 (1) of the Finance Act, 1896, which enacted: "The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate."

Notwithstanding this, in

Re Gibbs, Thorne v. *Gibbs,*

where a testator died after the passing of the Finance Act, 1894, but before the coming into force of the Finance Act, 1896, Settlement Estate Duty payable under the will was held (by Stirling, J.) to be chargeable on the general residue of the testator's estate and not out of the settled property. Stirling, J., held that sect. 19 (1) of the Finance Act, 1896, was not retrospective, and that he was bound by *Re Webber.* But both these cases were overruled by the Court of Appeal in *Re Maryon-Wilson, Wilson* v. *Maryon-Wilson.* The latter case was followed in *Re Duke of St. Albans, Loder* v. *The Duke of St. Albans,* [1900] 2 Ch. 872, where it was held that the Settlement Estate Duty on legacies and annuities contingently settled was payable out of the settled funds, the annuitants to bear their proper share in accordance with the rule laid down in *Parker-Jervis, Salt* v. *Locker.* Therefore the law both before and after the Finance Act, 1896, was and is that settled property must bear its own Settlement Estate Duty, subject to any express provisions to the contrary by the testator.

There have been several decisions on what is an *express provision to the contrary,* viz.:

Re Lewis, Lewis v. *Smith.*

A testatrix, Teresa Lewis, who died 2nd September, 1899, having by her will settled personalty upon certain trusts, directed her debts, funeral and testamentary expenses, including "all duties payable by law out of my estate," to be paid out of her residuary estate.

Held (by Kekewich, J.) this did not amount to an "express provision to the contrary" within sect. 19 of the Finance Act, 1896, and Settlement Estate Duty must consequently be paid out of the settled personalty in exoneration of the rest of her estate. (But see *Re Pimm, Sharpe* v. *Hodgson* (p. 243), where Mr. Justice Farwell held a direction to pay "my duties" out

of residue exonerated specifically devised real estate from Estate Duty and Settlement Estate Duty.)

Re Leveridge, Spain v. *Lejoindre.*

A testatrix, Cath. Hayes Leveridge, who died 27th December, 1899, by her will devised certain real estate to her trustees upon trust for certain persons in succession, and directed them to stand possessed of her residuary personal estate upon trust to pay (*inter alia*) the Estate Duty on the whole of the real and personal estate.

Held (by Joyce, J.) that Estate Duty included the Settlement Estate Duty which had become payable, and such Settlement Estate Duty was accordingly payable out of the residuary personal estate.

Re King, Travers v. *Kelly.*

John King, who died on the 26th March, 1899, by his will, made on the 11th November, 1895, bequeathed legacies to three sons "free of all duties," and then bequeathed legacies of larger amounts to his daughter and two younger sons without adding the words "free of all duties," and directed his daughter's legacy to be retained by the trustees, and held upon the same trusts as her share of residue thereinafter given to her. He then gave his residuary real and personal estate to his trustees upon trust for conversion, and directed that out of the proceeds of sale the trustees should pay his funeral and testamentary expenses and debts and legacies and the Legacy Duty thereon, and should stand possessed of the residue in trust for his daughter and his two younger sons. He afterwards settled his daughter's share upon trust for the benefit of herself and issue.

On a summons taken out by the trustees for the determination of the question whether the Settlement Estate Duty payable on the daughter's settled legacy and settled share of residue was payable out of that legacy and share of residue or out of the general residuary estate,

Held (by Eady, J.) that the Settlement Estate Duty was not a testamentary expense, and was payable out of the settled property and not out of the general residuary estate.

Re Dyet, Morgan v. *Dyet.*

A testator, by his will, directed his trustees to set apart and invest so much of his estate as would produce a clear yearly

sum of 400*l.*, and to pay the income to his wife during her widowhood. There was a similar direction to set apart a sum sufficient to produce a clear yearly sum of 600*l.* to be paid to a daughter for life, and the residue was given to grandchildren.

The testator died on the 15th February, 1902.

Held (by Eady, J.) the Settlement Estate Duty was payable out of the residue, the words "*clear* annual sum" being a sufficient direction to the contrary within the meaning of sect. 19 to exonerate the sum set apart.

Re Cayley, Awdry v. *Cayley.*

A testatrix, who died on the 10th May, 1903, by her will dated in 1899, after bequeathing certain legacies and settling certain furniture and chattels upon trust to go with the inheritance of a certain estate, gave all her investments and securities for money to her trustees upon trust to pay her funeral and testamentary expenses and debts and the legacies bequeathed by her will and the *death duties* payable out of her estate.

Held (by Swinfen Eady, J.), on the construction of this will, that "death duties" included Settlement Estate Duty, and therefore there was an express provision to the contrary within sect. 19 (1) of the Finance Act, 1896, and the Settlement Estate Duty on the furniture was payable out of the said specified fund and not out of the furniture.

Re Turnbull (*deceased*), *Skipper* v. *Wade.*

A testatrix, by her will dated 28th June, 1893, bequeathed a legacy of 50,000*l.* to her husband, with a declaration that, if he should die before her, the legacy should not lapse but should vest in, and in that event she bequeathed the same to, his representatives to be dealt with as part of his personal estate as if he had died immediately after her. She also gave various legacies to different persons, including a legacy of 15,000*l.* to trustees on trust for a niece for life, and after such niece's death on trust for her children as she should appoint. She also gave a legacy of 3,000*l.* to her step-niece, and declared that all legacies given by her will should be paid "free from duty." The husband predeceased the testatrix, leaving a will. Both the testatrix's niece and step-niece had married after the date of the will, and the marriage settlement of the former contained a covenant for the settlement of after-acquired

property, while the latter, who married after the testatrix's death, settled her legacy. The testatrix died on the 19th November, 1903, and her estate was insufficient to pay the legacies in full after the debts and duties were discharged. The following questions arose :—

(1) Whether the gift of the legacies free from duty made the amount of each duty a legacy ?

(2) Whether having regard (*inter alia*) to the fact that the will was made before the Finance Act, 1896, the direction as to the payment of duty applied to Settlement Estate Duty ?

(3) Whether a duty of 10 per cent. which, in the events that had happened, was payable by the representatives of the husband was comprised in the general direction as to duties ?

It was held by Mr. Justice Farwell—

(1) That the duties were legacies, and that all the legacies must abate proportionately.

(2) That the direction applied to the Settlement Estate Duty, and

(3) That the direction applied to the duty payable by the husband's representatives.

In re Waller, Margarison v. *Waller.*

Testator, who died prior to the passing of the Finance (1909–10) Act, 1910, by his will, made in 1908, bequeathed to his wife his jewellery and certain household goods and effects, and also bequeathed to her two pecuniary legacies and a life annuity, in each case without any mention of duty. He also bequeathed pecuniary legacies and life annuities to other persons, all "free of duty," and gave the residue of his estate to trustees on trust to sell and hold proceeds on trusts therein mentioned, and directed his trustees to pay the annuities out of the income until, under a direction which followed, they should have set apart a capital "sufficient to answer by means of the *net income* thereof the annuities hereinbefore bequeathed."

The trustees had appropriated an annuity fund accordingly.

The questions before the Court were :—

(1) How the Settlement Estate Duty on the annuity fund ought to be borne.

(2) Whether the widow ought to bear the Legacy Duty on the gifts to her.

Held (by Sargant, J., on the 24th November, 1915) that the Settlement Estate Duty payable in respect of the annuity fund was payable out of the residuary estate and not out of the

annuity fund; also, that the widow must bear in respect of as well her annuity as her specific and pecuniary legacies the Legacy Duty imposed by sect. 58 of the Finance (1909–10) Act, 1910.

The following case has little bearing on any of the sections of the Finance Acts.

De Quetteville v. *De Quetteville.*

A testator, who died in the year 1895, bequeathed "all my moneys invested in and upon any stocks or funds whether in or out of the United Kingdom, and all my railway stocks, shares, debentures, and bonds, and generally all and every my securities for money" to trustees upon trust during the life of his sister to pay out of the income three annuities of 1,000*l.*, 500*l.*, and 500*l.* respectively, and the residue thereof to his brother W. during his life.

After the death of the testator's sister the trustees were to hold the trust fund, as to two sums of 21,000*l.* and 18,000*l.*, upon certain trusts, in favour of two other of the testator's brothers and their issue, and to stand possessed of the residue upon trust for W. for life, with remainders over. The testator bequeathed all the residue of his personal estate to W. subject to the payment of his funeral and testamentary expenses and debts and certain annuities. The residuary personalty was insufficient to pay the testator's debts and funeral and testamentary expenses, so a part of the Estate Duty had to be paid out of the trust fund.

Held by the Court of Appeal (Vaughan Williams, Stirling, and Cozens-Hardy, L. JJ., affirming the decision of Kekewich, J.) that the interest given to W. in each case was not a share of the fund, but an interest in the actual residue after payment respectively of the annuities and the two sums of 21,000*l.* and 18,000*l.*, and therefore the annuities and those two sums were not liable to diminution by reason of the Estate Duty having to be borne by the fund, or on account of the Settlement Estate Duty being payable in respect of the fund. It was stated that no question under the Finance Acts was involved in the case, but that it turned solely on the construction of the will.

II. *If the property is settled by some other disposition than the deceased's will.*

There is no doubt in these cases the settled property must

bear its own Settlement Estate Duty, subject also to any provision that may have been made in the settlement.

Example:—

By settlement of 1896, Blackacre stood limited to A. for life, remainder to sell, and proceeds to A.'s children (two sons and two daughters) in equal shares, but each of the daughter's shares being settled on her for life, and then to her children, &c. The daughters' shares must bear the Settlement Estate Duty thereon.

Re Maryon-Wilson, Wilson v. *Maryon-Wilson,*

bears on this point. The facts were:—

The deceased had covenanted by marriage settlement of the 23rd July, 1895, on the marriage of his daughter, that his executors should, six months after his death, pay to the trustees of the marriage settlement 25,000*l.* "without any deduction" to be held by them on the trusts of the settlement. By his will he gave 25,000*l.* to the trustees of the settlement in satisfaction of his covenant. It was held (by Lindley, M. R., Rigby and Williams, L. JJ.) that the Settlement Estate Duty must be borne by the testator's general residuary estate because of the words "without any deduction." Lindley, M. R., expressed his opinion that without these words the Settlement Estate Duty would have been payable out of the settled fund.

See also

Dundas's Trustees v. *Dundas's Trustees.*

By the marriage contract (date not given in the Report) executed on the marriage of Henry H. P. Dundas to Lady Beatrice Home, Sir Robert Dundas (father of the husband) bound himself, his heirs, executors and successors, to make payment to the trustees at the first term of Whitsunday or Martinmas after his death of the sum of 3,750*l.* or such other sum, more or less, as with a capital sum of 20,000*l.* and a sum of 6,250*l.* (to which the husband was entitled under the marriage contract of Sir Robert Dundas on the latter's death), more or less (the exact sum could not be ascertained until such death), would make up 30,000*l.* The three sums of 3,750*l.*, 20,000*l.*, and 6,250*l.* were settled upon the spouses in life rent, and then on the children of the marriage absolutely.

Sir Robert Dundas died on the 11th November, 1909, and there became due to the Crown the following duties:—

(1) Estate Duty on the 6,250*l.*
(2) Succession Duty on the same.
(3) Estate Duty on the 3,750*l.*
(4) Succession Duty on the same.
(5) Settlement Estate Duty on the same.

The said Sir R. Dundas's testamentary trustees and the trustees of the said marriage contract agreed that the duties Nos. (1), (2), and (4) were payable by the trustees of the marriage contract, and that Estate Duty No. (3) was payable by the said testamentary trustees, and both parties submitted a special case to the Court to decide by whom the Settlement Estate Duty on the 3,750*l.* at No. (5) should be borne.

Lords Kinnear and Mackenzie (the Lord President dissenting) held, on 31st January, 1912, that Settlement Estate Duty on the 3,750*l.*, more or less, required to make up the said sum of 30,000*l.* should be paid by the marriage contract trustees, and that the words of the marriage contract did not bind the father's testamentary trustees to make good a total sum of 30,000*l.* free of all duties.

See also *In re Tattersall's Settlement, Public Trustee* v. *Tattersall* (p. 205).

A direction in a will to pay "all death duties" does not include Settlement Estate Duty in respect of a sum covenanted to be paid by deceased and raisable out of his real estate. (See *Re Briggs, Richardson* v. *Bantoft*, p. 249.)

A. Deduction of Settlement Estate Duty in Succession Duty Accounts.

I. *As to Real Estate and Leaseholds.*

(1) Where the successor takes for life, interest at 4 per cent. (or if the Settlement Estate Duty is actually raised by mortgage at the rate fixed in such mortgage) on the Settlement Estate Duty is deductible in the Form 6 against the annual value of the property.

Since the war with Germany the rate of interest on the Settlement Estate Duty will vary with the date of the death.

(2) Where the successor takes in fee or absolutely (in this case the Settlement Estate Duty must have become charged on a prior death), the actual amount of the Settlement Estate Duty is deductible in Form 6-1 against the principal value of the property.

These deductions may not be made where the property is given "duty free."

II. *As to pure Personal Estate under a Deed.*

(1) If the Succession Duty is payable on the capital as passing to different persons in succession who shall be chargeable at one and the same rate (under sect. 33 of the Succession Duty Act, 1853, incorporating sect. 12 of 36 Geo. 3, c. 52), then the actual amount of the Settlement Estate Duty is deductible against the capital value of the settled funds in the Form No. 4.

(2) If the Succession Duty is payable on the life interest only of the successor, then the deduction for the Settlement Estate Duty is ascertained by taking 1 per cent. or 2 per cent. (according as the Settlement Estate Duty is payable at 1 per cent. or 2 per cent.) from the annual value of the settled funds in the Form No. 5.

B. Deduction of Settlement Estate Duty in Legacy Duty Accounts.

Deductions may be taken in a similar manner to those set out in respect of pure personal estate under the heading A. II.

These deductions may not be made if the legacy is given "duty free," so that the Settlement Estate Duty falls to be paid out of the residuary estate or some other fund.

CHAPTER III.

Domicile and Foreign Assets.

All property locally situate in the United Kingdom passing on the death of a person dying after the 1st August, 1894, is liable to Estate Duty without regard to the domicile of the deceased, but if the property is situate *out of* the United Kingdom, it is, by sect. 2 (2) of the Finance Act, 1894, expressly excluded unless, under the law in force before the 2nd August, 1894, "Legacy or Succession Duty is payable in respect thereof or would be so payable but for the relationship of the person to whom it passes," and as the Legacy Duty depends on the domicile of the deceased, it becomes a very important question.

There are two kinds of domicile, domicile of origin and domicile of choice.

The domicile of origin, speaking generally, is the place where a person is born, if his or her parents were domiciled there, and this domicile a man retains until it can be shown that he has obtained a new domicile of choice, viz., the place where a person takes up his abode as "his home with the intention of establishing himself and his family there and ending his days in that country." (See *Bell* v. *Kennedy*.)

The onus of proving a change of domicile, from the domicile of origin to a new domicile of choice, is on the person who asserts such change. See

Winans and another v. *Att.-Gen.*, [1904] A. C. 287.

This was an information by the Attorney-General on behalf of the Crown to recover Legacy Duty in respect of the estate of Wm. Louis Winans, who died on the 22nd June, 1897. The executors resisted the claim on the ground that the testator was domiciled in Maryland or, alternatively, New Jersey, U.S.A. The main facts are: Testator was born in 1822 in New Jersey.

His father left New Jersey when the testator was three years old and settled in Baltimore, Maryland, where he carried on business, and testator became a partner in that business. In 1850 he went to Russia on business of the firm and resided there some time, marrying there in 1851, and never went back to Baltimore. In 1859 he visited England for the first time. In 1860 he took a house at Brighton, Sussex, for twenty-one years, and thenceforward spent his winters in England. In 1870 the Russian business was wound up, and he lived regularly in England, visiting Russia for a month or two each year.

In 1870 he took leases of deer forests in Scotland, and he continued to do so until his death. In 1883 he ceased to visit Russia, but lived continuously in England, buying long leases of houses in London and Brighton.

His will was proved in England, and he described himself therein as a citizen of the United States. Evidence was also given that at times he stated it was his intention to return to America to develop large properties which he owned there.

Held by the House of Lords (Lords Halsbury and Macnaghten —Lord Lindley dissenting), reversing the judgment of the Court of Appeal (Collins, M. R., Stirling and Mathew, L. JJ.) and of the Queen's Bench Division (Kennedy and Phillimore, JJ.), that the onus of proving that a domicile had been chosen in substitution for the domicile of origin lies upon the party asserting that the domicile of origin had been lost;

That the Crown had failed to prove that Winans had a fixed and settled purpose of renouncing his domicile of origin, and therefore the claim for Legacy Duty failed.

See also *Huntley* v. *Gaskell* and *Re James, James* v. *James.*

It is not proposed to discuss here the rules and principles which must be observed in order to ascertain what the domicile of a person is, but, the domicile being admitted as either British or foreign, to show the effect thereof on the Estate Duty.

Property for this purpose must be sub-divided into—

(a) "Immoveable," which includes leaseholds and is governed by the *lex loci,* and

(b) "Moveable," which follows the person of the owner and is distributed according to the *lex domicilii.*

The effect of the domicile of a deceased person will be considered in relation to (I.) the deceased's free or unsettled property, and (II.) the settled property passing on deceased's death.

I. As to the Deceased's Free Property.

A. *If the deceased died domiciled in the United Kingdom.*

(1) All his property, real and personal (immoveable and moveable), situate in the United Kingdom is liable to Estate Duty on his death. (See sect. 1 of the Finance Act, 1894.)

(2) All his moveable property situate out of the United Kingdom is also liable to Estate Duty on his death, because it would have been liable to Legacy Duty or would have been liable but for the relationship of the person to whom it passes. (See sect. 2 (2) of the Finance Act, 1894, and *Thomson* v. *Advocate-General*, 13 Sim. 153; *Lord Advocate* v. *Douglas's Executors*, p. 518; and *Re Consuelo Duchess of Manchester, Duncannon* v. *Manchester*, p. 519.

A mortgage debt is moveable property. See

Lawson v. *The Commissioners of Inland Revenue.*

Under the law in force before the passing of the Finance Act, 1894, Legacy Duty was payable in respect of money secured by a mortgage of land in a foreign country.

Upon an appeal by an executor under sect. 10 of the Finance Act, 1894, it was held by the Exchequer Division of the High Court in Ireland (Palles, C. B., and Andrews and Murphy, JJ.), on 7th November, 1895, that Estate Duty was leviable on a mortgage debt secured on foreign real property under sect. 2 (2) of the Finance Act, 1894, and that sect. 115 of 56 Geo. 3, c. 56, was, by implication, repealed by 5 & 6 Vict. c. 82.

(3) His immoveable property situate out of the United Kingdom is not liable to Estate Duty on his death, because it would not, under the law in force before the passing of the Finance Act, 1894, have been liable to either Legacy or Succession Duty. There is an exception to this rule if the immoveable property formed an asset of a partnership in which the deceased was a partner when he died. The real property is then impressed in equity with the character of personal estate. (See *Stokes* v. *Ducroz*, 38 W. R. 535; 62 L. T. 176, where it was held such property was liable to Legacy Duty. See also *Forbes* v. *Steven* and *Att.-Gen.* v. *Hubbock*.)

Partnership assets are locally situate where the partnership is carried on. (See *Laidlay* v. *Lord Advocate*; *Beaver* v. *Master in Equity*; and *Commissioner of Stamp Duties* v. *Salting*.)

But if the deceased died domiciled in the United Kingdom, it seems to be immaterial where the partnership is carried on or where the head office of the partnership is situate, provided (1) the surviving partner is within the jurisdiction of the British Courts, or (2) by the law of the place where the partnership is carried on the interest of the deceased partner is deemed moveable property.

B. *If the deceased died domiciled out of the United Kingdom.*

(1) All his property, real and personal (immoveable and moveable), situate in the United Kingdom is liable to Estate Duty. (See sect. 1 of the Finance Act, 1894.)

This includes a policy of insurance on the deceased's life payable by a British insurance company. Although by sect. 19 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), the company are bound to pay over the policy moneys to the persons entitled without requiring the production of a British grant of representation, nevertheless, under sect. 9 (1) of the Finance Act, 1894, the Crown has a charge on the insurance moneys to the extent of its claim, and might obtain an injunction restraining the company from paying over so much of the policy moneys as represented the duty until the Crown's claim was satisfied. (See p. 60 for fuller notes on policies.)

If the deceased was a partner in a foreign partnership carrying on business and having its chief office abroad, and the partnership assets included real property in the United Kingdom purchased in the partners' names, Estate Duty is not payable on the deceased's share of such property, the partnership assets being locally situate where the partnership is carried on. (See *Commissioner of Stamp Duties* v. *Salting*.)

By the Trustee Savings Bank Regulations, 1900, dated 31st July, 1900 (St. R. & O., 1900, No. 629):—

"31 (6). The deposits of any deceased depositor who was at the time of his death domiciled in the Isle of Man shall be deemed to be personal estate of such depositor within the said Isle, and the trustees shall not be required to see to the payment of Probate Duty or of Estate or of Succession or Legacy Duty in respect of such deposits."

There are similar regulations, 32 (5) and 33 (5), with reference to depositors domiciled in the Islands of Jersey and Guernsey.

The Post Office Savings Bank Regulation, 1910, dated 18th May, 1910 (St. R. & O., 1910, No. 569), contain similar regulations, 94 (6), 95 (5), 96 (6), as to depositors domiciled in the

Isle of Man and the Islands of Jersey, Guernsey, Alderney, and Sark.

(2) Neither his moveable nor immoveable property situate out of the United Kingdom is liable to Estate Duty, because neither would have been liable to either Legacy or Succession Duty before the Finance Act, 1894. It becomes necessary, therefore, to consider carefully where the situation of the property actually is.

With reference to immoveable property, there can be no doubt that it is situate in the country of which it forms a part, subject to the rule that partnership real property is situate where the business is carried on.

An estate *pur autre vie* in English real estate would, of course, be liable to Estate Duty, following the Legacy Duty case of

Chatfield v. *Berchtoldt.*

The Countess de Zichy Ferraris died in 1851, domiciled in Hungary, having made a will in English form disposing of her estate and appointing English executors. She was entitled under the will of the Marquis of Hertford, who died in 1842, as from the death of her mother, Lady Strachan (died 1867), to one-third of a rent-charge of 700*l.* during the joint lives of the countess's sisters and the life of the longest liver. The Court decided the testatrix's one-third share of such estate *pur autre vie* vested in her English executors, and thereupon the Commissioners claimed Legacy Duty under her will in respect of it under sect. 20 of 36 Geo. 3, c. 52.

The Court of Appeal held that the property in question was in fact English real estate *pur autre vie,* which, in consequence of no special occupant being named, vested under 1 Vict. c. 26, in the deceased's executors, and was "applicable by law in the same manner as personal estate," and was chargeable with Legacy Duty accordingly, notwithstanding the deceased's foreign domicile, because, being real and not personal estate, it did not follow the person.

But as to moveable property the question as to its situation is more difficult.

Speaking generally, the British Government stocks and funds, the stocks of British municipal corporations, the inscribed stocks of the Colonies transferable only on the books of a bank in the United Kingdom, the shares of a foreign or colonial company registered on a duplicate register in the United Kingdom, scrip

issued in England entitling bearer to foreign bonds (*Venables* v. *Baring*), goods on the high seas capable of being dealt with here by means of the bills of lading in this country (*Att.-Gen.* v. *Hope*), goods *in transitu* to the United Kingdom which arrive after the death of the deceased (*Att.-Gen.* v. *Pratt*), the shares and debentures of limited companies having their registered offices in the United Kingdom are deemed to be situate in the United Kingdom. The rule seems to be that if some act is necessary abroad to realise the asset, its locality is deemed to be abroad. (*Att.-Gen.* v. *Dimond.*)

It must, however, be remembered that certificates to bearer may be had of Consols, French and Italian Rentes, and other European Government securities, therefore, if a Frenchman died domiciled in France possessed of 1,000*l.* Consols with bearer certificates actually situate in a Paris bank, Estate Duty would not be payable thereon on his death. Conversely, if an Italian died domiciled in Italy possessed of 10,000 francs in Italian Rentes with bearer certificates deposited in a London bank, these Rentes would be liable to Estate Duty on his death.

Bonds either of an English or foreign company, payable to bearer and transferable by delivery, without any further step being required abroad to perfect the title, are situate wherever the bonds actually are at the deceased's death. (See *Winans and another* v. *Att.-Gen.*, p. 518.)

Simple contract debts according to the general rule of law are locally situate where the debtor resides. Specialty debts according to the general rule of law are locally situate where the specialty is found (*Commissioners of Stamps* v. *Hope*), but an exception to this rule was made by sect. 39 of 25 & 26 Vict. c. 22, which enacted that:—

"For the purposes of the Stamp Duties on probates of wills and letters of administation, debts and sums of money due and owing from persons in the United Kingdom to any deceased person at the time of his death on obligation or other specialty, shall be estate and effects of the deceased within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract without regard to the place where the obligation or specialty shall be at the time of the death of the deceased."

Therefore, specialty debts due from persons in the United Kingdom are, for the purpose of Stamp Duties on probates or letters of administration, assimilated to simple contract debts so as to make them assets locally situate where the debtor

resides (and not where the instrument is found) at the owner's death.

This Act is considered to be applicable to Estate Duty payable on probates or letters of administration, but it will not apply to cases where no grant is required in respect of policy moneys. For example, where the deceased was not the owner of the policy, or where, although the deceased was the owner, he died domiciled out of the United Kingdom, in which case no grant is required. (See sect. 19 of the Revenue Act, 1889.)

The question of whether the debt is a specialty or not is decided by the law of the owner's domicile. (*Payne* v. *Rex.*)

Shares in an English Company on a Colonial Register.

Sects. 34—36 of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), which came into force on 1st April, 1909, contain the statutory provisions affecting colonial registers.

Sect. 34 (1) is as follows:—

"*Power for company to keep colonial register.*—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of *members resident in that colony* (in this Act called a colonial register)."

Sect. 35 contains regulations as to colonial register.

Sect. 36. "*Stamp Duties in case of shares registered in colonial registers.*—In relation to Stamp Duties the following provisions shall have effect:—

"(a) [Relates to stamps on transfers.]

"(b) On the death of a member registered in a colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register."

These sections are a codification of the previous law on colonial registers contained in the Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30), and sect. 18 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), the whole of the

former Act, and sect. 18 of the latter Act, having been repealed by sect. 286 of the Companies (Consolidation) Act, 1908.

As the Act only authorises a British company to register on the colonial register "*members resident in that colony*," it would seem to follow every other member should be registered in the register at the head office in the United Kingdom. It would therefore seem to be *ultra vires* for a British company having a colonial register in Melbourne, Victoria, to register the shares of a Frenchman resident in Paris on such colonial register.

The shares on the colonial register of a British company belonging to a person dying in a British colony, but domiciled in the United Kingdom, are therefore technically situate in the United Kingdom, and are liable to Estate Duty on his death, but this technical situation does not preclude an allowance under sect. 20 of the Finance Act, 1894, for the duty paid in the British possession to which that section applies under the authority of an Order in Council.

If a person dies domiciled outside the United Kingdom possessed of shares in a British company registered on the colonial register, these shares are not liable to Estate Duty on his death.

South African Mining and other Companies with Duplicate Register of Shareholders in London.

There are a number of companies constituted and registered according to the laws of the Province of the Transvaal, or the Orange Free State, or the Cape of Good Hope (in the Union of South Africa) respectively, which have their head office and board of directors and register of stock and shareholders in South Africa, but they also have a duplicate register in London where transfers can be registered on production of the certificates and the transfers or probate.

If the share certificates are in the United Kingdom at the death of the owner, the shares are considered to be assets in this country according to the doctrine of *Re Clark, M'Kechnie* v. *Clark*, and so are liable to Estate Duty without regard to the domicile of the owner; but where the certificates are abroad, even if the shares are in fact transferred on the British register and British representation is taken out to enable this to be done, it would appear Estate Duty is not payable thereon.

No transfer can be registered in England until the Death Duty claimed by the Provincial Government in South Africa has been paid.

There are numerous companies registered in Canada, with duplicate registers in London, to which the above remarks apply.

The following cases may be referred to on the question of the locality of assets. Some of them deal only with Probate Duty, but they would apply equally to Estate Duty. (*Att.-Gen.* v. *The New York Breweries*, see p. 124.)

Stern and others v. *The Queen.*

A testator died in this country possessed of securities for certain shares in the railways of the United States of America. These securities were certificates with a form of transfer and power of attorney executed in blank. They were marketable in this country, and the transferee could transfer his interest by merely handing the certificate to another person. Held that Probate Duty was payable thereon as part of the testator's estate, as delivery in this country transferred all the transferor's rights therein. The document of title was situate here.

Lord Sudeley v. *Att.-Gen.*

Algernon G. Tollemache died in 1892, domiciled in England, possessed of mortgages on real estate in New Zealand which, being foreign assets, did not pay Probate Duty on his death. By his will he appointed executors resident in England, and he bequeathed one-fourth of his residuary estate, including such assets, to his wife, Frances L. Tollemache, and before the same had been realised and distributed, she died. It was held (by Russell, C. J., and Charles, J.) these remained foreign assets in her estate which the executors could not possess themselves of without the intervention of the colonial Court, and need not be included in the account of her estate for probate. This was reversed by the Court of Appeal (Lopes and Kay, L. JJ., Lord Esher, M. R., dissenting), who held the right of the executors of the wife to claim from the executors of her husband due administration of his estate, including said mortgages, was an English asset, and therefore liable to Probate Duty as part of her estate.

Lopes, L. J., said (*inter alia*): "Neither Frances nor her executors could claim any part of this estate (viz., the New Zealand mortgages) in specie. The executors of her husband were not trustees of the estate for her; all she was entitled to was her proportion of the proceeds of her husband's estate after realisation. Neither Frances nor her executors had any claim against the mortgagor to recover the mortgage debt or any

portion of it; that was a claim enforceable only by the executors of Algernon. The rights of the executors of Frances as against the executors of her husband is a right to have his estate administered. Administered where? The husband was domiciled in England, his will was proved in England, his executors are in England, and his estate is being administered in England. The executors of the husband can only be sued in the English Courts. It is an English *chose in action* recoverable in England, and is in my opinion an English and not a foreign asset, and as such is subject to Probate Duty here."

The House of Lords (the Lord Chancellor, Lords Herschell, Macnaghten, Shand, and Davey) on 13th November, 1896, affirmed the judgment of the Court of Appeal. The Lord Chancellor (Halsbury) said (*inter alia*): "I entirely agree with the language used by Lopes and Kay, L. JJ. I believe that they have put in very terse and accurate language the true situation of this property in respect of its local character as assets."

Re Smyth, Leach v. *Leach.*

A testator, domiciled in England, by his will devised a plantation in Jamaica to trustees (resident in England) on trusts for certain persons for life, with remainder in events which happened to sell, and proceeds to A. and others. A. died in the lifetime of the tenants for life domiciled in England. The question was whether his share was liable to Probate Duty as forming part of his estate. Held (by Romer, J.) that the case was governed by the decision in *Lord Sudeley* v. *Att.-Gen.*, and that A.'s interest under the will was an English asset on which Probate Duty was payable. The root of the matter was: What was the proper forum for the legatee to make his claim in to enforce his rights? Clearly English.

On the other hand, supposing A. died domiciled abroad (say, in New South Wales) possessed of English assets and having appointed an executor resident in New South Wales, and bequeathed the residue of his estate to his brother B., and the executor appoints C., resident in London, his attorney to prove A.'s will in the principal registry and to collect the English assets. Before C. has taken any steps B. dies domiciled in New South Wales. It would seem to follow from *Re Smyth, Leach* v. *Leach*, that Estate Duty cannot be claimed on B.'s death on any part of the English assets because B.'s representatives at

the date of his death have only a right of action against A.'s executor, who is resident abroad, and this is not an English asset.

But if B. died after C. had obtained administration in this country it would appear that the right of action would be against C., unless a distinction is to be drawn between the attorney of an executor and the attorney of a person entitled to administer in the case of an intestacy. See

In re Rendell, Wood v. *Rendell.*

Thos. Rendell died intestate in and domiciled in England, leaving a widow and children all resident in the United States of America. The defendant (the widow of the deceased) had not constituted herself legal personal representative of the deceased in the United States or elsewhere, but the plaintiff (as her attorney) had taken out letters of administration in this country.

A summons was taken out to determine whether the plaintiff could safely hand over the property to the defendant, or whether it was his duty to distribute it among the next of kin.

Cozens-Hardy, J., said: "Can I hold it is the duty of the administrator to hand the assets over to one of the class of persons entitled, who has not clothed herself here or elsewhere with the character of legal personal representative? I think not. The observations of Kindersley, V.-C., in the case of *In re Dewell* (4 Drew. 272) are in accordance with strict common sense and very much in point. He says in reference to *Chambers* v. *Bicknell* (2 Hare, 536), 'That is a clear decision that the person to whom administration is granted on the nomination of the party entitled to it, is full administrator, exactly as if he had obtained administration in his own right as regards the claims of other persons,' and again, 'When the administrator is once constituted, he is liable to all claims by persons who are entitled to claim against the estate.' That being so, in my opinion the plaintiff could not get a good receipt if he handed over the assets to the widow."

Payne v. *The King.*

A testator, who resided and was domiciled in Victoria, Australia, had a mortgage on property in New South Wales, the mortgagor being resident and domiciled on Victoria. Probate Duty had been paid in Victoria on such mortgage debt. The appellant sought a return of the duty. Lord Macnaghten, in

giving the judgment of the Privy Council, said: "The debt, though a specialty debt in New South Wales, was a simple contract debt in Victoria. . . . The debt was an asset in Victoria and recoverable under a Victorian probate, although it may well be that in order to discharge the mortgage Probate Duty would also have to be paid in New South Wales, and the debt, if recovered in Victoria, might be retained in Court until the mortgagees were in a position to discharge the mortgage. This result seems to their Lordships consistent with the practice as established in England." Probate Duty was therefore correctly paid in Victoria.

Commissioner of Stamp Duties v. *Salting.*

Wm. Severin Salting and his brother, George Salting, both resided in England, but they were partners in equal shares in the business of sheep farmers carried on by their agent in the State of New South Wales.

The assets of the partnership consisted of lands, live stock, and other property of the value of 200,086*l.* 0*s.* 9*d.* W. S. Salting died on the 23rd June, 1905. The Commissioner of Stamp Duties in New South Wales claimed Probate Duty on the deceased's share of the partnership assets under the Stamp Duties Act, 1898, of New South Wales, as amended by the Probate Duties (Amendment) Act, 1899, by which such duty is "charged and chargeable upon and in respect of all estate, whether real or personal, which belonged to any testator or intestate dying after the commencement of" the "Act."

On appeal by the Commissioner from a judgment of the Supreme Court of New South Wales (Pring, J., dissenting) against such claim, the Privy Council (present, the Lord Chancellor (Loreburn), Lords Ashbourne and Macnaghten, Sir Arthur Wilson and Sir Alfred Wills) allowed such appeal and confirmed the Commissioner's assessment. Lord Macnaghten, who delivered the judgment, said (*inter alia*): "Their Lordships agree with Pring, J., who held that the case was covered by the decision of the House of Lords in *Laidlay* v. *Lord Advocate,* 15 App. Cas. 468, and the opinion of this Board in *Beaver* v. *Master in Equity,* 72 L. T. R. 127; [1895] A. C. 251. In both those cases it was laid down that the question to be determined was the local situation of the asset, and that the share of a deceased partner in a business was situate where the business was carried on. . . . The broad rule approved was that enunciated by Sir James Hannen in the case of *In the goods of Ewing,* 44

L. T. 278; 6 P. Div. 19, that the share of a deceased partner is situate where the business is carried on at the time of the death. In the present case, though both partners resided in England, there can be no doubt that the business was carried on in New South Wales."

Re Clark, McKechnie v. *Clark.*

A testator, W. G. Clark, died October, 1902, domiciled in England possessed of bearer bonds of a South African muncipality (without an office in England, and the bonds were not marketable in London) and shares in South African companies, transferable either in South Africa or London, but with the head offices in South Africa. The bonds and share certificates were deposited with a London bank.

Held (by Farwell, J.) that in administration the rule applicable to the locality of simple contract debts applied also to bonds, so that they take the locality from the residence of the debtor; the bonds therefore passed under a gift of property situate in South Africa, but the shares passed under a similar gift of property situate in England. The *situs* of the share certificates determined the situation of the property.

Att.-Gen. v. *Glendining.*

The facts are as follows:—

James William Smith, of Dunedin, New Zealand, died on the 3rd June, 1902, in London, but domiciled in New Zealand, having by his will appointed the defendants Robert Glendining and John Reid, both of Dunedin, his executors, who duly proved his will in New Zealand.

The testator at his death was possessed of certain bonds of foreign and colonial Governments deposited by him at the bank of New Zealand, London. These bonds were all bearer securities and transferable in England.

Duty was paid in New Zealand on the said bonds on the testator's death under the Deceased Persons' Estate Duties Acts (1881, 1885, and 1886) in force in said colony.

The attorney of the executors applied in England to reseal the probate.

The Commissioners of Inland Revenue claimed Estate Duty on the said bonds.

Held (by Phillimore, J.) that although the bond might contain a charge on the property of a foreign corporation, the bailee of such a bond must get a good discharge before he can

deliver it up, therefore Estate Duty (in lieu of Probate Duty) was payable thereon.

Winans and another v. *Att.-Gen.*, [1910] A. C. 27.

The facts are as follows :—

W. L. Winans died in 1897 in London, but domiciled in America (see *Winans and another* v. *Att.-Gen.*, 90 L. T. 721), possessed of American, Russian, German and Prussian bonds and securities to the value of 1,573,962*l*. Estate Duty was paid thereon by the petitioners on the Inland Revenue affidavit of the deceased's estate under protest, reserving their right to claim repayment of the duty, and this was a petition claiming such return on the ground that the property was situate out of the United Kingdom (see sect. 2 (2) of the Finance Act, 1894), and as the deceased was a domiciled American, it would not have been liable to Legacy or Succession Duty.

The Crown claimed that the securities and property and documents of title relating to the property were all situate in England at the time of the deceased's death, that the securities were all in fact bonds payable to bearer, and that they were in any case operative to pass the title by delivery and were marketable and transferable in England. The petitioners denied this, and evidence was given to show that the securities were marketable and transferable in England.

It was held (by Bray, J.), on the 16th July, 1907, following *Att.-Gen.* v. *Glendining*, 92 L. T. R. 87, that the bonds, &c., were property situate in England and were liable to Estate Duty on the deceased's death.

His decision was affirmed by the Court of Appeal (Cozens-Hardy, M. R., Fletcher Moulton and Buckley, L. JJ.).

The House of Lords (Loreburn, L. C., and Lords Atkinson, Gorell, and Shaw), on the 7th December, 1909, affirmed the decision of the Court of Appeal.

The British executors of a deceased dying domiciled in the United Kingdom are liable to the extent of the assets they receive, or ought to receive, to account for the Estate Duty on the moveable property abroad, although such property does not come into their hands or control. See

Lord Advocate v. *Douglas's Executors.*

A testator, who died on the 6th May, 1905, domiciled in Scotland, left considerable estate, moveable and immoveable, in Great Britain and Australia. On the 18th December, 1903,

he executed two trust dispositions and settlements, one relating exclusively to his estate in Great Britain, and the other to his estate in Australia, and he appointed separate executors and trustees as to his estate in Great Britain and Australia respectively. [The two documents together were held to form one will; it is inaccurate to speak of a man leaving two wills, he can leave but one will. (See *Douglas Menzies* v. *Umphelby and others*, 45 Sc. L. R. 979.)] Of the executors and trustees nominated in the Australian Trust Disposition and Settlement, only those resident in Australia accepted office.

The British executors gave up an inventory of the testator's personal estate situated in Great Britain, and questions arose whether Estate Duty and Settlement Estate Duty were payable in respect of the Australian moveable assets, and whether the British executors were liable for such payment.

It was contended for the British executors that they were not liable in respect of that estate as it was not under their control or within their title.

The Lord Ordinary (Lord Cullen) in Scotland (on the 31st October, 1911) held that they were liable to account for the duties to the extent of the value of the estate in their hands.

Also

Re Consuelo Duchess of Manchester, Duncannon v. *Manchester.*

The facts are as follows:—

Consuelo Duchess of Manchester died on 20th November, 1909, domiciled in England, and the summons raised various questions as to the death duties payable on that event. She died possessed of personal estate in England of about 120,000*l.*, and of personal estate in America, of which the details were not put in evidence, but which were said to amount to upwards of 400,000*l.*

By her will and codicil dated respectively 7th January and 28th October, 1909, she appointed English executors and trustees, and also appointed three American gentlemen her executors as to any property for which it might be necessary to take out probate in America. The will was proved here by the English executors on 17th December, 1909, and in America by the American executors on 8th June, 1910. The question which had to be decided was whether Estate Duty was payable in respect of the American personal property come to the hands of the American executors in America, and whether the English executors were liable for that payment.

By arrangements between the parties the Commissioners of Inland Revenue were made parties to this summons, which was issued in an action to administer the estate, and they submitted to the jurisdiction in these proceedings.

It was contended on behalf of the beneficiaries under the will that the English executors would not receive and had no means of ascertaining the extent or value of the American assets, and that, however wide the language of the Finance Act might be, a reasonable interpretation must be placed on the words employed, and although foreign assets bequeathed to English executors might be liable for duty, foreign assets not so bequeathed could not be liable.

Mr. Justice Swinfen Eady (on 12th February, 1912), in delivering judgment, after quoting sect. 2 (2) of the Finance Act, 1894, said (*inter alia*): As to the American personalty situate out of the United Kingdom, it was to be included for the purpose of Estate Duty if Legacy or Succession Duty were payable in respect of it.

It was well established that whether Legacy or Succession Duty was payable depended on the domicile of the testator, and was not affected by the question where the property might happen to be locally situate at the death. *Thomson* v. *Advocate-General*, 12 C. & F. 1, finally established this rule. Lord Brougham said that that was considered to be a case in which there was a conflict of decision and a conflict of authorities which made it highly expedient that it should be settled after the fullest and most mature deliberation with the assistance of the judges. The judges were summoned, and the House unanimously held, in accordance with their opinion, that Legacy Duty was payable on assets of persons domiciled in Great Britain wherever the property was locally situate, and conversely in the case of persons domiciled abroad, that although they might have personal property here at the time of death, in contemplation of the law that property was supposed to be situate in the country of the domicile, and did not come within the Act for the purposes of Legacy Duty.

The question arose again in *Att.-Gen.* v. *Napier*, 6 Ex. 217, and it was held that the point was concluded by that case. On this principle it was decided that where a British official on duty in India died there, not having acquired a domicile there, the whole of his property was liable to Legacy Duty here, although it was almost entirely situate there at the time of death.

The result is that the American personalty of the testatrix

who was domiciled here must be included in property passing on the death in respect of which Estate Duty is payable.

The next question is what is the extent of the liability of the English executors for Estate Duty on American personalty. It was urged that they had not possession of the funds or the means of compelling information about them, and could neither ascertain nor provide for the amount of duty. Sect. 6 (2) said that the executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit.

The testatrix was competent to dispose at death of the American personalty, and therefore the executors were under an obligation to pay Estate Duty in respect thereof, subject, however, to the limitation to be presently mentioned. Subsect. 3 says that an executor not knowing the value may undertake to bring into the account when the value is ascertained, and sect. 8 (3) said that the executor shall be accountable for the Estate Duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor or might, but for his own neglect or default, have received. There was thus no hardship on the executor. He was only liable to the extent of the assets he might receive and which would be available to satisfy his liability. The right of the Crown to duty and the limited liability of the executor to pay it were, in his Lordship's opinion, free from doubt.

In the case of assets abroad there might in some cases be a difficulty in the Crown obtaining payment, but that did not affect the legal position. As was said by Mr. Justice Chitty, *In re Tootall's Trusts*, 23 Ch. D. 532, "If an Englishman domiciled in England dies resident abroad, and no part of his assets are in England, and no probate or letters of administration are taken out in England, there may be a great difficulty in asserting the Crown's right to duty, and inasmuch as foreign Courts will not enforce the revenue laws of this country, the difficulty may in some cases be insuperable. But the Crown's right cannot depend on the greater or less difficulty in pursuing the remedy."

His Lordship therefore determined that the executors were liable to Estate Duty on all the assets of which the testatrix was competent to dispose, including the American personalty to the extent of assets come to their hands or which would have so come but for their own neglect or wilful default.

A further question of Settlement Estate Duty on the American assets arose in this case, which is set out in Chapter II. on Settlement Estate Duty.

A gift *inter vivos* of foreign moveables within three years of the deceased's death is not liable to Estate Duty, since it would not have been liable to Legacy Duty or Succession Duty.

Foreign moveable assets do not pass to the deceased's executor "as such" (see *In re Scull, Scott* v. *Morris*), and therefore the Estate Duty in respect thereof is a charge thereon under sect. 9 (1) of the Finance Act, 1894.

II. As to Settled Property Passing on the Deceased's Death.

The actual domicile of a deceased life tenant has very little bearing on the question of the liability of settled property passing on his death to Estate Duty.

A. *If the settled property is situate in the United Kingdom.*

Estate Duty is payable wherever may be the domicile of the deceased life tenant or the residence of the trustees or beneficiaries.

Examples:—

(a) A domiciled Frenchman, on his marriage to an English lady, settles 10,000*l.* Consols (which he transfers to and has registered in the names of two Frenchmen resident in Paris as trustees) in trust for his wife for life, and then for their children equally.

The wife dies in 1906 domiciled in France, leaving children all resident in France. Estate Duty is payable on her death. Of course, the more usual settlement on such a marriage would be that the wife or some relative of hers would settle the Consols, and that the trustees would be resident in England or Englishmen resident in France, but the example given emphasises the effect of the locality of the settled property. (See *Att.-Gen.* v. *Felce*, p. 526.)

(b) A Frenchman, on his marriage to an English lady, by his marriage contract declares there shall be community of goods between them.

He dies possessed of 10,000*l.* Consols. These Consols are not as a fact "settled property" within the

Finance Act, 1894, s. 22 (1) (h) definition, but as a matter of practice Estate Duty is claimed only on half, the other being considered the wife's property in the deceased's lifetime.

(c) Investments in English companies in the joint names of two persons domiciled abroad, on the death of one, Estate Duty is payable on the proportion contributed by the deceased.

B. *If the settled property is situate out of the United Kingdom.*

Estate Duty is only payable "if Legacy or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes."

It is therefore necessary to consider the cases that have been decided under the Legacy Duty Act, 1796, and the Succession Duty Act, 1853, where a foreign element was involved.

(1) *As to foreign settled immoveable property.*

This would never have been liable to Legacy Duty and not to Succession Duty unless it had been subject to a trust for sale and conversion prior to the life tenant's death, and the proceeds had been comprised in an English settlement; it would then depend on the attendant circumstances as to whether it was liable to Succession Duty or not.

Examples:—

(a) A. conveyed foreign immoveable property to English trustees to hold in trust for A. for life (died domiciled in England in 1906), remainder to sell, and proceeds to his children. Estate Duty is not payable on A.'s death.

(b) A. conveyed foreign immoveable property to English trustees on trust to sell, and to hold the proceeds in trust for A. for life (died 1907), and then for A.'s children equally. Estate Duty is payable on A.'s death (whether the property was sold in A.'s lifetime or not). (See *Att.-Gen.* v. *Johnson and others*, p. 528.) The reason for this will appear under the next heading.

(2) *As to foreign settled moveable property.*

Moveable property abroad would have been liable to Legacy Duty only if bequeathed by the will of a person dying domiciled

in the United Kingdom (*Thomson* v. *Advocate-General*); therefore, if a testator who died before the 2nd August, 1894, domiciled in the United Kingdom, possessed of moveables abroad, bequeathed the same to British trustees in trust for a person dying after the 1st August, 1894, for life, with remainder over to others, Estate Duty is payable on the death of such tenant for life in respect of the moveables abroad. Probate Duty was never payable on such property, hence sect. 21 (1) of the Finance Act, 1894, would afford no exemption in such a case. Moveables abroad were not liable to Legacy Duty under the will of a person domiciled abroad.

Moveables abroad would not have paid Succession Duty unless comprised in a British settlement—viz., one enforceable in the British Courts.

The following cases are set out because they show the gradual extension of what can be considered a British settlement; in *Re Lovelace; Re Wallop's Trusts;* and *Att.-Gen.* v. *Campbell*, the trust funds were invested in British funds at the time of the life tenants' deaths respectively; but in *Re Cigala's Settlement Trusts* and *Att.-Gen.* v. *Jewish Colonisation Association* some of the funds were abroad.

Re Lovelace.

The facts are as follows:—

Mrs. Lovelace, by her marriage settlement (made in 1817) settled certain funds on her husband for life (died 1852), then to herself for life, remainder as she should absolutely by deed or will appoint, in default to her next of kin.

Mrs. Lovelace died in 1856, domiciled in Bordeaux, having by her will disposed of the settled funds (which consisted of English personalty and had been paid into the Court of Chancery by the trustees) in favour of persons domiciled in France. The Court of Appeal held Succession Duty was payable by the appointees under sect. 2 of the Succession Duty Act, 1853, the disposition under which they took was the settlement creating the power, and the domicile of the appointor was immaterial.

Re Wallop's Trusts.

The facts are as follows:—

William Wallop died in 1856, having by his will bequeathed his residuary estate to his daughter, Henrietta Wallop, for her life, and then in events as she should by will appoint, and in

default to others. Miss Wallop married Mr. Gibaut, and died domiciled in Jersey in 1860, having by her will appointed two legacies of 3,000*l.* and 1,000*l.* out of the said residuary estate, and given the residue to her husband. On the testator's death Legacy Duty was paid under his will on Miss Wallop's life interest, and on her death Legacy Duty was paid under the same will on the *corpus* under sect. 18 of 36 Geo, 3, c. 52. Succession Duty was also claimed by the Crown on the legacies of 3,000*l.* and 1,000*l.* as derived from Mrs. Gibaut as predecessor, and Turner, L. J., and Knight Bruce, L. J., held the duty was rightly claimed.

Att.-Gen. v. *Campbell.*

A testator, who died in London in 1853, domiciled in Portugal, made a will in English form, giving all his property (situate almost entirely in Portugal) to his executors (three resident in London, and one in Portugal) upon trust to convert and invest in English 3 per cent. Consols, and to pay certain annuities to his wife and sister for their respective lives, and to hold the residue in trust for his children equally. He also authorised his trustees to appropriate a sum of Consols to provide for the annuities in exoneration of his residuary estate.

His estate was administered in Chancery and invested in Consols, and certain portions were carried over to the separate accounts of the annuitants.

On the death, in 1870, of the testator's sister, a claim for Succession Duty was raised in respect of the funds carried over to meet her annuity. The House of Lords held the claim was good on the ground that there was a British settlement. Lord Westbury said: "If a party taking this distributive part comes to this country and invests it upon trusts, it assumes the character of a British settlement and British property, and is no longer to be dealt with as if it were merely a portion of a foreign testator's estate to be received in the course of administration."

In re Cigala's Settlement Trusts.

The facts are as follows:—

By a settlement, in English form, on the marriage of an English lady to a domiciled Italian, the wife settled French Rentes, shares in the Bank of France, and English Government securities, after the death of the survivor of the spouses, for the children of the marriage. The parties lived and died in Italy

the husband being the survivor and dying in 1879, leaving two children domiciled in Italy. At the death of the husband, the trust funds were in the names of four English trustees. The Master of the Rolls held Succession Duty was payable on the husband's death. "First of all, the settlor was English, the settlement was an English settlement, originally three of the four trustees were English, and, finally, all of them were English. Was the property in any sense of the term foreign? It was in one sense foreign, that is to say, the French Government were the debtors or persons liable to pay, and the mode of transfer was regulated by French law. Again, the shares in the Bank of France have, to a certain extent, a French locality, but both kinds of property are undoubtedly moveable property and undoubtedly subject to the general rule that the right to dispose of the property follows the person of the owner. That being so, the ownership of the property being in an English lady, it being then transferred by her to and vested in trustees, all of whom are now English, and the beneficial ownership being dealt with by this English settlement, for what reason am I to hold that this property is not liable to duty? The legal ownership is in persons subject to British jurisdiction, the forum for deciding upon the claim of the children is a British Court, and the property being in fact English property, it appears to me that this is property coming within the second section of the Act" (Succession Duty Act, 1853).

Att.-Gen. v. *Felce.*

A domiciled French subject deposited foreign bearer bonds in a London bank in the name of a domiciled Englishman, who, upon the request of the depositor, executed a declaration dated 19th November, 1880, of the trusts upon which the funds were to be held, viz., to pay the income to the depositor as settlor for life, and afterwards to hold the funds upon trusts in favour of domiciled French subjects, none of whom were lineal issue of the settlor. The trustee died in 1888, domiciled in England, leaving two English executors, and the settlor died in France in January, 1891.

A claim was made on the executors of the trustee for Account Stamp and Temporary Estate Duty (52 & 53 Vict. c. 7, ss. 5 and 6), which were paid, and Succession Duty on the capital value of the trust funds (less the Account Duty) passing on the death of the settlor to the persons entitled. The

executors refused to pay the Succession Duty on the ground that the securities were foreign and the settlor and beneficiaries were French. An English information was thereupon filed, and came before the Queen's Bench Division (Mathew and Cave, JJ.) for hearing on 2nd March, 1894, when judgment was given for the Crown on the ground that the trust was English and the funds were under English law.

Att.-Gen. v. *Jewish Colonisation Association.*

An association was formed in 1891 into a limited company, and was registered in England under the Companies Acts, with the object of benefiting Russian Jews and of assisting the emigration of Jews from Europe or Asia to other countries. The affairs of the company were administered by a council, and the registered office of the company was in England. By an indenture of 26th August, 1892, Baron Hirsch de Gereuth gave to the company certain stocks, shares, and securities, mostly situate abroad, on condition that the company would permit the donor to receive the income during his life, and would after his death apply such stocks, shares, and securities for the objects of the company.

The registered office of the company was in London, where the general meetings were held and where the register of members was kept. The council met in Paris in offices there, where the company had its headquarters, its officers, clerks, and staff, and where most of its business was transacted, the business in London being generally formal.

Baron Hirsch was an Austrian subject, domiciled in Austria, and died so domiciled, and the property was for the most part situate in foreign countries. On the death of Baron Hirsch, in 1896, the Crown claimed Succession Duty and Estate Duty on the principal value of all the property.

Held the company was an English company domiciled in England, and that there was an English trust enforceable in English Courts, and following the principle laid down in *Att.-Gen.* v. *Campbell*, *Re Lovelace's Settlement*, and *Re Cigala's Settlement Trusts*, Succession Duty was payable under the Succession Duty Act, 1853, and Estate Duty was payable under sect. 2 (1) (b) of the Finance Act, 1894, as upon property deemed to pass on the death of the donor in which the donor had an interest ceasing on his death.

The Court of Appeal (Smith, M. R., Collins and Stirling, L. JJ.) affirmed this decision. Stirling, L. J., said (*inter alia*),

as to the rule laid down by Lord Cranworth (in *Wallace* v. *Att.-Gen.*, L. R. 1 Ch. p. 6), that the operation of the Act of 1853 is to be confined to persons who become entitled by the law of this country. "The rule, therefore, if it is to be treated as now binding, must be taken to be satisfied where property is found to be legally vested in a person subject to the jurisdiction of the English Courts, and the title to the beneficial interests in that property is regulated and capable of being enforced by the laws of England even though the operation of the instrument creating that title may, to some extent, be governed by foreign law."

Att.-Gen. v. *Johnson and others.*

By his will dated the 1st October, 1895, one Todd, of the City of London, devised and bequeathed the residue of his real and personal estate (including his M. estate in Upper Assam, India) unto his trustees upon trust to sell the same and thereout in the first place to pay the legacies given by his will, and to invest the residue in the stocks, &c., thereinafter mentioned, and the testator directed his trustees to stand possessed of his residuary estate and the investments thereof upon the trusts following:—that is, as to the income therefrom to pay thereout certain life annuities amounting to 1,500*l.* per annum, including an annuity of 100*l.* per annum to M. Graf during her life, and in the event of such annual income exceeding the amount of the annuities thereinbefore bequeathed, the testator directed that down to and until the death of the last survivor of the annuitants, the balance of such annual income should be paid to eight named persons, including M. Graf and H. J. Reeves—to all of whom, except Reeves, life annuities had been given—or to the survivors or survivor of them in equal shares.

There was no gift of the residue after the death of the eight annuitants. He authorised his trustees until the sale of his M. estate in Upper Assam to carry on the business of a tea planter carried on by him on that estate, and the testator declared that his trustees might *postpone the sale* and conversion of any part of his estate for so long as they might think desirable, and that in the meantime the net annual produce of the unconverted part of his estate, including the profits from carrying on of the said business, should be applied in the same manner as if the property had been converted.

The testator died in London, and his will was proved in the Principal Registry by the executor, who was resident in

England, and Estate Duty and Settlement Estate Duty were paid on all the testator's personal estate.

Reeves died in 1903 and M. Graf died in 1905, and the sale of the M. estate was postponed and still remained unsold after their deaths. The annuitants (except Graf) were still living, and the annual income from the residuary estate had always exceeded the amount of the annuities. The trustees in 1903 and 1905 were all resident in England. On the death of Reeves in 1903 the Crown claimed Estate Duty and Settlement Estate Duty on the capital value of so much of the M. estate as he had enjoyed the income of. Succession Duty was also claimed on the share of the income of this estate passing to the other seven life tenants.

Similar claims were also raised on the death of Graf in 1905, except so far as Estate Duty had already been claimed on the death of Reeves. The Crown's claim was based on the fact that the real estate was equitably converted into personal estate, and that there was a British trust and the trustees were resident in England, and the English Courts were the proper forum for the administration of the trust.

It was held by Bray, J., on the 31st July, 1907, that these duties were payable.

It will be seen as a result of these cases that, taken separately, (1) the domicile of the settlor is immaterial (it was foreign in *Att.-Gen.* v. *Campbell*, in *Re Cigala's Settlement Trusts*, and in *Att.-Gen.* v. *Jewish Colonisation Association*). (2) The domicile of the life tenant is immaterial (it was foreign in the last two mentioned cases). (3) The residence of the successor is immaterial (it was foreign in the said three cases). (4) The situation of the trust funds is immaterial (some were abroad in the last two cases) *provided there is a settlement in such a form that a British Court is the proper forum for its administration.*

These four facts, together with the residence of the trustees of the settlement, in the aggregate have much weight in deciding whether there is a settlement capable of being enforced by a British Court.

Of course, if one of two trustees is resident abroad and one in the United Kingdom, the residence of the beneficiaries may have a material bearing on the point whether a British Court is the proper forum for administering the trusts.

Example :—

A., an Englishman, settled 10,000 francs in French Rentes on himself for life (died 1907), and then for his two

children, both resident in London at A.'s death. There were two trustees at A.'s death, one resident in Paris and one in London. Estate Duty is thought to be payable on A.'s death, since A.'s children would preferably take proceedings in the English Courts against the trustee in London to enforce the trusts of the settlement.

If a settlement is British in its inception, so that the charge of Succession Duty arose on its execution, the trustees and beneficiaries cannot get rid of this charge merely by transferring the trust funds to trustees resident abroad.

Example:—

A., an Englishman, resident in London, on his marriage in 1886 settled 10,000*l.* Consols on himself for life (died 1892), and then on his wife B. for life (died 1912), and then for their children who attain twenty-one equally. (There were two such, C. and D.) The original trustees were E. and F., resident in London. In 1896 B., C., and D. leave England and settle in Australia; new trustees, resident in Australia, are appointed, the trust funds are realised and invested in mortgages in Australia. Succession Duty would have been payable on the death of B., therefore Estate Duty is payable. The Crown's right to the duty does not depend on the difficulty in pursuing the remedy. (See extract from *In re Tootall's Trusts* set out on p. 521.)

FINANCE ACT, 1894.

[57 & 58 Vict. c. 30.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year. [31st July, 1894.]

PART I.—ESTATE DUTY.

GRANT OF ESTATE DUTY.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate Duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate Duty.

2.—(1.) Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—

(a) Property of which the deceased was at the time of his death competent to dispose ;

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ;

(c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom ; and

(d) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by

arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2.) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, Legacy or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

(3.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3.—(1.) Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2.) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

4. For determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, *or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased*, shall not be aggregated with any other property but shall be an estate by itself, and the Estate Duty shall be levied at the proper graduated rate on the principal value

thereof : *but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate Duty.* (*x*)

5.—(1.) Where property in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—

(a) a further Estate Duty (called Settlement Estate Duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased ; but

(b) during the continuance of the settlement the Settlement Estate Duty shall not be payable more than once. (*y*)

(2.) If Estate Duty has already been paid in respect of any settled property since the date of the settlement, the Estate Duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property. (*z*)

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4.) Any person paying the Settlement Estate Duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* Stamp Duty (if any) charged on the settlement in respect of that property. (*y*)

(5.) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life, or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the

(*x*) The words printed in italics are repealed by the Finance Act, 1900 (63 & 64 Vict. c. 7), s. 18, as to persons dying on or after April 9th, 1900.

(*y*) Sub-sects. (1) and (4) were repealed by the Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 18 (1).

(*z*) See Finance Act, 1898 (61 & 62 Vict. c. 10), s. 13, for the words added to this sub-section, and the Finance Act, 1914, s. 14, for amendment.

purpose of Estate Duty, in like manner as for the purpose of Succession Duty.

COLLECTION AND RECOVERY OF DUTY AND VALUE OF PROPERTY.

6.—(1.) Estate Duty shall be a Stamp Duty, collected and recovered as hereinafter mentioned.

(2.) The executor of the deceased shall pay the Estate Duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate Duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4.) Estate Duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5.) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6.) Interest *at the rate of three per cent. per annum* (*x*) on the Estate Duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, *and shall form part of the Estate Duty.* (*x*)

(7.) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8.) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of 3 per cent. per annum from the date at which the first instalment is due, *less income tax*, (*x*) and the first

(*x*) The words printed in italics are repealed by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 40.

instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7.—(1.) In determining the value of an estate for the purpose of Estate Duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(c) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate Duty is paid; and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3.) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5.) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased:

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed. (*x*)

(6.) Where an estate includes an interest in expectancy, Estate Duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate Duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of Estate Duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of Estate Duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8.) Subject to the provisions of this Act, the value of any property for the purpose of Estate Duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9.) Where the Commissioners require a valuation to be made

(*x*) This proviso is partly repealed by the Finance (1909–10) Act, 1910, ss. 60 and 61.

by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10.) Property passing on any death shall not be aggregated more than once, nor shall Estate Duty in respect thereof be more than once levied on the same death.

8.—(1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate Duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate Duty were therein mentioned as well as Succession Duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate Duty is payable upon the death of the deceased, and shall be accountable for the Estate Duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the Estate Duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate Duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5.) Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate Duty is leviable on the death of the deceased.

(6.) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate Duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7.) Estate Duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable and be treated as duty in arrear.

(8.) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9.) Where the Commissioners are satisfied that the Estate Duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms as the Commissioners think fit.

(10.) *Interest on arrears of Estate Duty shall be paid as if they were arrears of Legacy Duty.* (*x*)

(11.) If after the expiration of twenty years from a death upon which Estate Duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12.) Where it is proved to the satisfaction of the Commissioners

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(*x*) The words printed in italics are repealed by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 40.

that too much Estate Duty has been paid, the excess shall be repaid by them, and in cases where the overpayment was due to over valuation by the Commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of Estate Duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the Commissioners under this Act.

(16.) The Estate Duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17.) The form of certificate required to be given by the proper officer of the Court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

(18.) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

9.—(1.) A rateable part of the Estate Duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate Duty, the Commissioners shall grant a certificate of the Estate Duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3.) Subject to any repayment of Estate Duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be

conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4.) If the rateable part of the Estate Duty in respect of any property is paid by the executor, it shall where occasion requires be paid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5.) A person authorised or required to pay the Estate Duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6.) A person having a limited interest in any property, who pays the Estate Duty in respect of that property, shall be entitled to the like charge, as if the Estate Duty in respect of that property had been raised by means of a mortgage to him.

(7.) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate Duty in respect of property comprised in the settlement and held upon the same trusts.

10.—(1.) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal. (*x*)

(3.) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may

(*x*) See Finance Act, 1896, s. 22, for addition.

order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5.) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court.(*x*)

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

DISCHARGE FROM AND APPORTIONMENT OF DUTY.

11. -(1.) The Commissioners on being satisfied that the full Estate Duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate Duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2.) Where a person accountable for the Estate Duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief

(*x*) See the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 22, for the words added to this sub-section.

of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate Duty, and the Commissioners shall give a certificate of such discharge.

(3.) A certificate of the Commissioners under this section shall not discharge any person or property from Estate Duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4.) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate Duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate Duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

13.—(1.) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property, or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all

claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly;

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "death duties" means the Estate Duty under this Act, the duties mentioned in the First Schedule to this Act and the Legacy and Succession Duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

14.—(1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate Duty may be recovered by the person, who being authorised or required to pay the Estate Duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2.) Any dispute as to the proportion of Estate Duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a County Court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3.) Any person from whom a rateable part of Estate Duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15.—(1.) Estate Duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

(2.) It shall be lawful for the Treasury to remit the Estate Duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art, or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate Duty.

(3.) Estate Duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the

widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4.) Estate Duty shall not be payable in respect of any advowson or church patronage which would have been free from Succession Duty under section twenty-four of the Succession Duty Act, 1853.

SMALL ESTATES.

16.—(1.) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

(2.) All such property may be comprised in the notice under the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of Estate Duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or Estate Duty has been paid upon the principal value of that estate, the Settlement Estate Duty and the Legacy and Succession Duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4.) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the Court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

RATES OF ESTATE DUTY.

17. The rates of Estate Duty shall be according to the following scale (*x*):—

(*x*) The scale of the rates is repealed by the Finance Act, 1907 (7 Edw. 7, c. 13), s. 30, as respects persons dying on or after the 19th April, 1907.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per Cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
,,	500	,,	,,		1,000	Two pounds.
,,	1,000	,,	,,		10,000	Three pounds.
,,	10,000	,,	,,		25,000	Four pounds.
,,	25,000	,,	,,		50,000	Four pounds ten shillings.
,,	50,000	,,	,,		75,000	Five pounds.
,,	75,000	,,	,,		100,000	Five pounds ten shillings.
,,	100,000	,,	,,		150,000	Six pounds.
,,	150,000	,,	,,		250,000	Six pounds ten shillings.
,,	250,000	,,	,,		500,000	Seven pounds.
,,	500,000	,,	,,		1,000,000	Seven pounds ten shillings.
,,	1,000,000	-	-	-	-	Eight pounds.

The rate of the Settlement Estate Duty where the property is settled shall be one per cent. (*y*)

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate Duty and the Settlement Estate Duty shall be payable at the rate per cent. for the full sum of ten pounds. (*z*)

SUCCESSION DUTY.

18.—(1.) The value for the purpose of Succession Duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate Duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this Act for Estate Duty on real property, with interest at the rate of three per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2.) The principal value of real property for the purpose of Succession Duty shall be ascertained in the same manner as it would

(*y*) Repealed by the Finance Act, 1914. s. 18 (1).

(*z*) The words printed in italics are repealed by the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 40.

be ascertained under the provisions of this Act for the purpose of Estate Duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession Duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate Duty.

LOCAL TAXATION GRANT.

19. In substitution for the grant out of the Probate Duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the Estate Duty derived from personal property, such sum as the Commissioners, in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which Estate Duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first-mentioned Acts shall apply, as if the sum so determined were the Probate Duty grant or one half of the proceeds of the sums collected in respect of the Probate Duties (as the case requires) within the meaning of those Acts.

BRITISH POSSESSIONS.

20.—(1.) Where the Commissioners are satisfied, that in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of such duty to be deducted from the Estate Duty payable in respect of that property on the same death.

(2.) Nothing in this Act shall be held to create a charge for Estate Duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate Duty.

(3.) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4.) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

SAVINGS AND DEFINITIONS.

21.—(1.) Estate Duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property. (*x*)

(2.) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3.) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4.) The Settlement Estate Duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act. (*y*)

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty shall not be payable in respect of that property until the death of the survivor.

22.—(1.) In this Part of this Act, unless the context otherwise requires:—

(a) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act:

(b) The expression "will" includes any testamentary instrument:

(c) The expression "representation" means probate of a will or letters of administration:

(*x*) Amended by the Finance (1909-10) Act, 1910, s.55, and the Finance Act, 1914, s. 14.

(*y*) Repealed by the Finance Act, 1914, s. 18 (1).

(d) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person:

(e) The expression "Estate Duty" means Estate Duty under this Act:

(f) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale:

(g) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property:

(h) The expression "settled property" means property comprised in a settlement:

(i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust:

(j) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:

(k) The expression "incumbrances" includes mortgages and terminable charges:

(l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":

(m) The expression "the Commissioners" means the Commissioners of Inland Revenue:

(n) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

(o) The expression "prescribed" means prescribed by the Commissioners.

(2.) For the purposes of this Part of this Act—

(a.) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

(b.) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(c.) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

APPLICATION TO SCOTLAND.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1.) The Court of Session shall be substituted for the High Court:

(2.) "Sheriff Court" shall be substituted for "County Court":

(3.) "Confirmation" shall be substituted for "representation":

(4.) The expression "receiver of the property and of the rents and profits thereof" means a judicial factor upon the property:

(5.) The expression "Inland Revenue affidavit" means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:

(6.) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty eight of the Act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine:

(7.) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four

shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the Court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence:

(8.) The expression "personal property" means moveable property:

(9.) The expression "real property" includes heritable property:

(10.) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage:

(11.) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person:

(12.) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act:

(13.) The expression "trustee" includes a tutor, curator, and judicial factor:

(14.) The expression "settled property" shall not include property held under entail:

(15.) An institute or heir of entail in possession of an entailed estate shall whether *sui juris* or not be deemed for the purposes of this Act to be a person competent to dispose of such estate. (*x*)

(16.) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, Settlement Estate Duty as well as Estate Duty shall be paid in respect of such estate, but neither Estate Duty nor Settlement Estate Duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies: (*y*)

(17.) Where an institute or heir of entail in possession of an

(*x*) See the Finance Act, 1896 (59 & 60 Vict. c. 28), s. 23, for the additions to this sub-section.

(*y*) Amended by the Finance Act, 1914, s. 14.

entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate Duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate Duty paid by him as aforesaid:

(18.) Where any person who pays Estate Duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

(a) for an order of sale of the property or part of it, and in the event of the Court granting such order, it shall provide for the payment out of the price of the amount of the Estate Duty which has been paid by such person, and the Court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the Court shall seem proper; the Court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or

(b) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate Duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the Court shall grant authority to the clerk of Court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate Duty:

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty.

(19.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

COMMENCEMENT.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

PART IV.—INCOME TAX.

35. In respect of the income tax hereby imposed under Schedule A., where the tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect :—

(a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and

(b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

(i.) Where the owner is occupier or assessable as landlord, or where a tenant is occupier and the landlord undertook to bear the cost of repairs, by a sum equal to one-sixth part of that amount; and

(ii.) Where a tenant is occupier and undertook to bear the cost of repairs, by such a sum not exceeding one-sixth part of that amount, as may be necessary to reduce it to the amount of rent payable by him.

(c) As between the owner and a mortgagee of his property, or any person having a charge thereon or entitled to any ground-rent, rent-charge, annuity, or other annual sum payable thereout, the owner's right of deduction under the Income Tax Acts in respect of income tax shall be in no

wise prejudiced or affected by the relief afforded by this section.

(d) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth, and in the case of any house or building (except a farmhouse or building included with lands in assessment) is more than one-sixth, below the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this section shall not apply.

SHORT TITLE.

42. This Act may be cited as the Finance Act, 1894.

SCHEDULES.

FIRST SCHEDULE.

EXISTING DUTIES REFERRED TO.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

2. The stamp duties imposed by section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended and extended by section eleven of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

3. The additional Succession Duties imposed by section twenty-one of the Customs and Inland Revenue Act, 1888.

4. The temporary Estate Duties imposed by sections five and six of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to Legacy Duty or Succession Duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate Duty has been paid, or under any other disposition under which Estate Duty has been paid.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184..	The Stamp Act, 1815.....	Section thirty-eight.
56 Geo. 3, c. 56...	An Act the title of which begins with the words "An Act to repeal the several stamp duties" and ends with the words "managing the said duties."	Section one hundred and seventeen.
43 Vict. c. 14.....	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

FINANCE ACT, 1896.

[59 & 60 Vict. c. 28.]

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, to amend the Law relating to Customs and Inland Revenue, and to make provision for the Financial Arrangements of the Year. [7th August, 1896.]

PART IV.—DEATH DUTIES.

ESTATE DUTY.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15.—(1.) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2.) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3.) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4.) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16. The Estate Duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (d) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

17. *Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds:—*

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.(x)

18.—(1.) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all Estate Duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment or the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2.) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3.) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19.—(1.) The Settlement Estate Duty leviable in respect of a legacy or other personal property settled by the will of the deceased

(x) The whole of this section is repealed by the Finance Act, 1900 (63 & 64 Vict. c. 7), s. 18, as regards persons dying on or after April 9th, 1900.

shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2.) The Settlement Estate Duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

20.—(1.) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, (*x*) *and is settled so as to be enjoyed in kind in succession by different persons*, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind *by a person not competent to dispose of the same*, be exempt from Estate Duty, but if it is sold *or is in the possession of some person who is then competent to dispose of the same*, shall become liable to Estate Duty.

(2.) The person selling the same, or for whose benefit the same is sold, *and also the person being in possession and competent to dispose of the same*, shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, *and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose.*

21. Where on the death of a deceased person Estate Duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the Estate Duty to the extent to which it has been paid or is payable in respect of the property on which Estate Duty is payable. (*y*)

22. There shall be added to sub-section five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

(*x*) The words in italics in sect. 20 are repealed by the Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 96 (1), except as respects persons dying before the 30th April, 1909.

(*y*) See the Finance Act, 1907, s. 15.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with.

24.—(1.) Unless the context otherwise requires—

(a) This Part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(b) The expression "deceased person" means a person dying after the commencement of this Part of this Act;

(2.) Part I. of the Finance Act, 1894, is in this Act referred to as "the principal Act."

39. . . . Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

40. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

41. This Act may be cited as the Finance Act, 1896.

SCHEDULE.

Acts Repealed.

PART III.—DEATH DUTIES.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 124.	An Act to amend the laws relating to the Inland Revenue.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict. c. 30.	The Finance Act, 1894.	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the estate duty," and in sub-section eight, the words "less income tax."
		Section eight, sub-section ten.
		Section seventeen, from "provided that," to the end of the section.

FINANCE ACT, 1898.

[61 & 62 Vict. c. 10.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year. [1st July, 1898.]

PART V.—ESTATE DUTIES.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property."

14. Where in the case of a death occurring after the commencement of this Act Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

PART VI.—MISCELLANEOUS.

17. This Act may be cited as the Finance Act, 1898.

FINANCE ACT, 1900.

[63 Vict. c. 7.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provision for the financial arrangements of the year. [9th April, 1900.]

PART III.—DEATH DUTIES.

11.—(1.) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

(2.) This section shall *inter alia* apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination. (*x*)

12.—(1.) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I. of the Finance Act, 1894) in any property has before

(*x*) Amended by the Finance (1909–10) Act, 1910, s. 59 (1).

the passing of this Act been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed: and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2.) Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I. of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to Estate Duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one-half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.

13.—(1.) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2.) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

14.—(1.) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the Death Duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of Estate Duty of the property so passing does not exceed five thousand pounds.

(2.) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

PART VI.—GENERAL.

18. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

19. This Act may be cited as the Finance Act, 1900.

SCHEDULES.

SECOND SCHEDULE.

REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 30	The Finance Act, 1894.	Section four, from "or which under a disposition" to "descendant of the deceased," and from "but if any benefit" to the end of the section, as respects persons dying after the passing of this Act.
59 & 60 Vict. c. 28	The Finance Act, 1896.	Section seventeen, as respects persons dying after the passing of this Act.

REVENUE ACT, 1903.

[3 Edw. 7, c. 46.]

An Act to make certain amendments of the Law relating to Customs and Inland Revenue, and of the Law relating to the powers and duties of the National Debt Commissioners.

[14th August, 1903.]

PART IV.—MISCELLANEOUS.

14. Where, in the case of a person dying after the commencement of this Act, the fixed duty of thirty shillings or fifty shillings has been deposited or paid under section sixteen of the Finance Act, 1894 (which relates to the Estate Duty on small estates), and it is afterwards found that the gross value of the property on which Estate Duty is payable exceeds three hundred or five hundred pounds, as the case may be, the Commissioners of Inland Revenue, if they are satisfied that there were reasonable grounds for the original estimate of the value of the property, may (notwithstanding anything in section thirty-five of the Customs and Inland Revenue Act, 1881) allow an amount equal to the fixed duty deposited or paid to be deducted from the Estate Duty payable in respect of the property.

17.—(2.) This Act shall come into operation on the first day of September nineteen hundred and three and may be cited as the Revenue Act, 1903.

[Sub-section one of section seventeen dealing with "Repeal" is not printed as it does not relate to Estate Duty.]

FINANCE ACT, 1907.

[7 Edw. 7, c. 13.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

[9th August, 1907.]

PART III.—DEATH DUTIES.

12 (*x*). The scale set out in the First Schedule to this Act shall, in the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, be substituted for the scale of rates of Estate Duty set out in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act):

Provided that where an interest in expectancy (within the meaning of Part I. of the principal Act) in any property has before the nineteenth day of April nineteen hundred and seven been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

13. The power of the Commissioners under sub-section (11) of section eight of the principal Act to remit the payment of Estate Duty or interest thereon shall apply to the other duties which are included in the definition of death duties in sub-section (3) of section thirteen of that Act as well as to Estate Duty.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for Estate Duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is

(*x*) This section is repealed by the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 96 (1), except as respects persons dying before the 30th April, 1909.

made before the lapse of the two years mentioned in that sub-section.

15. The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which Estate Duty is payable shall, instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were calculated on the value of the property on which Estate Duty is payable: Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

16. In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under sub-section (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.

PART IV.—LOCAL TAXATION ACCOUNT.

17.—(1.) The grants specified in the Second Schedule to this Act shall instead of being charged in manner provided by the Acts relating to those grants, be charged on and paid out of the Consolidated Fund or the growing produce thereof, but in the case of grants which are payable during the continuance of any temporary Act only so long as that Act is continued.

(2.) The proceeds of the local taxation (customs and excise) duties, and of the duties on local taxation licences (including any duty charged under sub-section (1) of section eight of the Locomotives on Highways Act, 1896) payable under any Act in force at the commencement of this Act into any local taxation account, shall, instead of being paid into that account, be paid into the Exchequer, and there shall be paid into any such local taxation account out of the Consolidated Fund or the growing produce thereof a sum equal to the amount which would have been paid into that account as the proceeds of the duties if this Act had not passed.

(3.) Where under this section or under any other enactment the amount of any sum paid into any local taxation account is made to depend on the proceeds of the duties on local taxation licences, those proceeds shall be calculated, in the event of any alteration of the rate of duties, as if the duties were at the rate in force at the commencement of this Act:

Provided that, if in any year owing to any alteration in the rate

of duties the rate of any such duty is higher than the rate in force at the commencement of this Act, and the proceeds of that duty in that year as so calculated are less than the average proceeds of the duty for the three years ending the thirty-first day of March nineteen hundred and seven, the proceeds of the duty instead of being calculated as aforesaid shall be deemed to be the amount of those average proceeds, and the Commissioners of Inland Revenue shall give their certificates as to the sums ascertained to be the proceeds of those duties accordingly.

(4.) In this section the expression "proceeds of duties" includes sums ascertained to be the proceeds of the duties, and any reference in any enactment to the duties or proceeds of the duties referred to in this section shall, so far as relates to the distribution of or mode of dealing with those duties or proceeds, be construed as a reference to the sums to be paid in lieu thereof under this section.

(5.) This section shall have effect as from the commencement of the current financial year, and, as respects any payment made or other thing done between the commencement of the current financial year and the date of the passing of this Act, the Treasury may cause such adjustments of accounts to be made as are required to give effect to the provisions of this section.

PART VII.—GENERAL.

30.—(1.) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2.) . . . Part III. of this Act shall be construed together with the Finance Act, 1894.

(3.) This Act may be cited as the Finance Act, 1907.

SCHEDULES.

FIRST SCHEDULE.

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per Cent. of
	£			£	
Exceeds	100	and does not exceed		500	One pound.
,,	500	,,	,,	1,000	Two pounds.
,,	1,000	,,	,,	10,000	Three pounds.
,,	10,000	,,	,,	25,000	Four pounds.

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per Cent. of
	£		£	
Exceeds	25,000	and does not exceed	50,000	Four pounds ten shillings.
,,	50,000	,, ,,	75,000	Five pounds.
,,	75,000	,, ,,	100,000	Five pounds ten shillings.
,,	100,000	,, ,,	150,000	Six pounds.
,,	150,000	,, ,,	250,000	Seven pounds.
..	250,000	,, ,,	500,000	Eight pounds.
..	500,000	,, ,,	750,000	Nine pounds.
..	750,000	,, ,,	1,000,000	Ten pounds.
.	1,000,000	,, ,,	1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
..	1,500,000	,, ,,	2,000,000	Ten pounds on one million, and twelve pounds on the remainder.
,,	2,000,000	,, ,,	2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
,,	2,500,000	,, ,,	3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
,,	3,000,000	,, ,,	——	Ten pounds on one million, and fifteen pounds on the remainder.

SECOND SCHEDULE.

(1.) The Estate Duty grants paid under section nineteen of the Finance Act, 1894; and

(2.) The agricultural rates grant paid under section two of the Agricultural Rates Act, 1896; and

(3.) The Scottish agricultural rates grant paid under section three of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896.

THIRD SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 30	The Finance Act, 1894.	The scale of the rates of estate duty in section seventeen, except as respects persons dying before the nineteenth day of April nineteen hundred and seven.

FINANCE (1909–10) ACT, 1910.

[10 Edw. 7, c. 8.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions. [29th April, 1910.]

PART I.—DUTIES ON LAND VALUES.

APPEALS.

33.—(1.) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(a) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

(2.) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may

be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section, and shall, subject to appeal to the Court under this section, be final.

(3.) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

(4.) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the County Court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such County Court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

(5.) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the Council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

34.—(1.) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland and Ireland respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2.) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.

PART III.—DEATH DUTIES.

54. The scale set out in the Second Schedule to this Act shall, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, be substituted for the scale set out in the First Schedule to the Finance Act, 1907, as the scale of rates of Estate Duty, and two per cent. shall be substituted for one per cent. in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of Settlement Estate Duty. (*x*)

55. For the purpose of any claim to relief from Estate Duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

56.—(1.) The Commissioners may, if they think fit, on the application of any person liable to pay Estate Duty or Settlement Estate Duty or Succession Duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(*x*) Repealed by the Finance Act, 1914, s. 18 (1), as respects persons dying after the 15th August, 1914.

(2.) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3.) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of Estate Duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance :

Provided that—

(a) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only ; and

(b) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

58.—(1.) Any Legacy or Succession Duty which under the Stamp Act, 1815, or the Succession Duty Act, 1853, or any other Act, is payable at the rate of three per cent. shall be payable at the rate of five per cent., and any Legacy or Succession Duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession.

(2.) The Legacy and Succession Duty payable at the rate of one per cent. on the amount or value of any legacy or succession under the Stamp Act, 1815, and the Succession Duty Act, 1853, or any other Act, shall be levied and paid notwithstanding any repeal effected by or anything contained in the principal Act (except subsection (3) of section sixteen thereof) or any other Act, and the duty shall also be levied and paid in cases where the person taking

the legacy or succession is the husband or wife of the testator, intestate, or predecessor as in cases where the person taking the legacy or succession is a lineal ancestor or descendant of the testator, intestate, or predecessor:

Provided that the duty shall not be levied—

(a) Where the principal value of the property passing on the death of the deceased in respect of which Estate Duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed fifteen thousand pounds, whatever may be the value of the legacy or succession; or

(b) Where the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed one thousand pounds, whatever may be the principal value of such property; or

(c) Where the person taking the legacy or succession is the widow or a child under the age of twenty-one years of the testator, intestate, or predecessor, and the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed two thousand pounds, whatever may be the principal value of such property.

(3.) In this section, the expression "deceased" means, in the case of a legacy, the testator (including a person making a donation mortis causâ) or intestate, and, in the case of a succession arising through devolution by law, the person on whose death the succession arises, and, in the case of a succession arising under a disposition, the person on whose death the first succession thereunder arises; and the expression "legacy" includes residue and share of residue.

(4.) This section shall take effect in the case of Legacy Duty only where the testator by whose will the legacy is given or the intestate on whose death the Legacy Duty is payable, dies on or after the thirtieth day of April nineteen hundred and nine, and, in the case of a succession arising through devolution by law, only where the succession arises on or after that date, and, in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date.

59.—(1.) In the case of a person dying on or after the thirtieth day of April nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift *inter vivos* must have been made, or a

surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting, or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (a) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (c) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months:

Provided that this section shall not apply to any gift *inter vivos*, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April nineteen hundred and eight, or made or effected for public or charitable purposes.

(2.) So much of paragraph (c) of sub-section (1) of section two of the principal Act and this section as makes gifts *inter vivos* property which is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3.) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

60. —(1.) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of Estate Duty) shall cease to have effect.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the Commissioners shall fix the price of the property

according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3.) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I. of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.

61.—(1.) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

(2.) Where it is claimed that a fixed duty is payable in respect of any property under sub-section (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be, and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed for the purpose of paying purchase money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3.) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of Estate Duty by instalments).

(4.) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the Estate Duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is

actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5.) (*x*) *Where an estate, in respect of which Estate Duty is payable on the death of a person dying after the passing of this Act, comprises land on which timber, trees, or wood are growing, the value of such timber, trees, or wood shall be aggregated with the other property passing on the death of the deceased for the purpose of determining the value of the estate and the rate of Estate Duty, but the Estate Duty which, but for this sub-section, would be payable on the principal value of the timber, trees, or wood shall not be payable thereon, but shall, at the rate so ascertained, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of the timber, trees, or wood, when felled, during the period which may elapse until the land on the death of some other person again becomes liable or would, but for this sub-section, have become liable to Estate Duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received:*

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of Estate Duty on the principal value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of Estate Duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable.

This sub-section shall apply to Succession Duty payable in respect of woodlands in like manner as it applies to Estate Duty, except that nothing in this sub-section shall affect the rate of Succession Duty.

62. Where Increment Value Duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of Estate Duty under sub-section (1) of section seven of the principal Act, for the amount of Increment Value Duty so to be collected as if it were a debt.

63. In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, section twenty of the Finance Act, 1896 (which gives an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption

(*x*) The first paragraph of sect. 61 (5), printed in italics, was repealed by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 9.

from Legacy and Succession Duty, as well as from Estate Duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold, and then only in respect of the last death on which the property passed.

64. Where an interest in expectancy within the meaning of Part I. of the principal Act in any property has, before the thirtieth day of April nineteen hundred and nine, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART VIII.—GENERAL.

93.—(1.) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commissioners of Customs and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(2.) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

95.—(1.) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any

duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2.) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated.

(3.) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4.) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5.) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

96.—(1.) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(3.) Part III. of this Act shall be construed together with the Finance Act, 1894.

(7.) This Act may be cited as the Finance (1909–10) Act, 1910.

SCHEDULES.

SECOND SCHEDULE.

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate									Estate Duty shall be payable at the Rate per Cent. of
	£							£	
Exceeds	100	and	does	not	exceed			500	1
,,	500	,,	,,					1,000	2
,,	1,000	,,	,,					5,000	3
,,	5,000	,,	,,					10,000	4
,,	10,000	,,	,,					20,000	5
,,	20,000	,,	,,					40,000	6
,,	40,000	,,	,,					70,000	7
,,	70,000	,,	,,					100,000	8
,,	100,000	,,	,,					150,000	9
,,	150,000	,,	,,					200,000	10
,,	200,000	,,	,,					400,000	11
,,	400,000	,,	,,					600,000	12
,,	600,000	,,	,,					800,000	13
,,	800,000	,,	,,					1,000,000	14
,,	1,000,000	-	-	-	-	-	-		15

SIXTH SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
* *	* *	* * * * *
36 Geo. 3, c. 52.	The Legacy Duty Act, 1796.	In section fourteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein."

Session and Chapter.	Title or Short Title.	Extent of Repeal.
54 Geo. 3, c. 92.	The Probate and Legacy Duties (Ireland) Act, 1814.	In section fifteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein."
* *	* *	* * * * *
16 & 17 Vict. c. 51.	The Succession Duty Act, 1853.	Section twenty-three, except as respects persons dying before the passing of this Act.
* *	* *	* * * * *
59 & 60 Vict. c. 28.	The Finance Act, 1896.	In section twenty, the words from "and is settled" to "by different persons"; the words "by a person not competent to dispose of the same"; the words "or is in the possession of some person who is then competent to dispose of the same"; the words "and also the person being in possession and competent to dispose of the same"; and the words from "and in the case" to the end of the section, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.
7 Edw. 7, c. 13.	The Finance Act, 1907.	In section two, the word "tobacco"; and section twelve, and the First Schedule, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.

FINANCE ACT, 1911.

[1 & 2 Geo. 5, c. 48.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make other provisions for the financial arrangements of the year.

[16th December, 1911.]

PART V.—DEATH DUTIES.

18. It is hereby declared that, in estimating for the purposes of sub-section (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connection with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

19. (*x*) Sub-section (5) of section sixty-one of the Finance (1909–10) Act, 1910 (which relates to duty in respect of timber, trees, or wood), shall have effect and shall be deemed always to have had effect as if the words "on or after the thirtieth day of April nineteen hundred and nine" were substituted for the words "after the passing of this Act."

PART VI.—GENERAL.

22. . . .

(3.) This Act may be cited as the Finance Act, 1911.

(*x*) This section is repealed by the Finance Act, 1912 (2 & 3 Geo. 5, c. 8), s. 9.

FINANCE ACT, 1912.

[2 & 3 Geo. 5, c. 8.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make other provisions for the financial arrangements of the year.

[7th August, 1912.]

PART III.—INLAND REVENUE (MISCELLANEOUS).

9. Where an estate, in respect of which Estate Duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to Estate Duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section five of section sixty-one of the Finance (1909–10) Act, 1910, and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed.

PART V.—GENERAL.

13. . . .

(2.) This Act may be cited as the Finance Act, 1912.

FINANCE ACT, 1914.

[4 & 5 Geo. 5, c. 10.]

An Act to continue the Duty of Customs on Tea, to reimpose Income Tax and Super-Tax, with amendments and modifications, and to amend the Law relating to Death Duties and the National Debt, and for purposes incidental thereto. [31st July, 1914.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART III.—DEATH DUTIES.

12. The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of estate duty set out in the Second Schedule to the Finance (1909–10) Act, 1910, as the scale of rates of estate duty.

13.—(1.) The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

(2.) Where the net value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds one thousand pounds, the amount of legacy and succession duty payable in respect of the property shall not exceed the amount by which the net value of the property as estimated for the purposes of estate duty exceeds one thousand pounds.

14. Any relief from the payment of estate duty given by sub-section (2) of section five, or by sub-section (1) of section twenty-

one of the Finance Act, 1894 (which relate to settled property), or by sub-section (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and settlement estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen:

Provided that—

(a) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, estate duty has been paid or any of the duties specified in sub-section (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of estate duty on the death of the other party to the marriage; and

(b) on the first occasion on which estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of settlement estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of settlement estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income; and

(c) section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909–10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any estate duty payable on the death of that person which would not have been payable but for this section.

15. Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent. ;

Where the second death occurs within two years of the first death, by forty per cent. ;

Where the second death occurs within three years of the first death, by thirty per cent. ;

Where the second death occurs within four years of the first death, by twenty per cent. ;

Where the second death occurs within five years of the first death, by ten per cent. :

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

16. Where an interest in expectancy within the meaning of Part I. of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART V.—MISCELLANEOUS.

18.—(1.) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2.) . . .

Part III. of this Act shall be construed together with the Finance Act, 1894.

(3.) This Act may be cited as the Finance Act, 1914.

The SCHEDULES above referred to.

FIRST SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per Cent. of
	£				£	
Exceeds	100	and does not exceed			500	1
,,	500	,,	,,		1,000	2
,,	1,000	,,	,,		5,000	3
,,	5,000	,,	,,		10,000	4
,,	10,000	,,	,,		20,000	5
,,	20,000	,,	,,		40,000	6
,,	40,000	,,	,,		60,000	7
,,	60,000	,,	,,		80,000	8
,,	80,000	,,	,,		100,000	9
,,	100,000	,,	,,		150,000	10
,,	150,000	,,	,,		200,000	11
,,	200,000	,,	,,		250,000	12
,,	250,000	,,	,,		300,000	13
,,	300,000	,,	,,		350,000	14
,,	350,000	,,	,,		400,000	15
,,	400,000	,,	,,		500,000	16
,,	500,000	,,	,,		600,000	17
,,	600,000	,,	,,		800,000	18
,,	800,000	,,	,,		1,000,000	19
,,	1,000,000	-	-	-	-	20

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Statutes repealed.
57 & 58 Vict. c. 30.	The Finance Act, 1894.	Sub-sections (1) and (4) of section five; in section seventeen the words "the rate of the settlement estate duty where the property is settled shall be two per cent."; sub-section (4) of section twenty-one.
10 Edw. 7, c. 8.	The Finance (1909-10) Act, 1910.	Section fifty-four and the Second Schedule as respects persons dying after the fifteenth day of August, one thousand nine hundred and fourteen; * * *

DEATH DUTIES (KILLED IN WAR) ACT, 1914.

[4 & 5 Geo. 5, c. 76.]

An Act to extend and vary as respects the present War the relief from Death Duties given under section fourteen of the Finance Act, 1900. [31st August, 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.— (1.) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts :—

(a) Where the value for the purpose of estate duty of the property passing to the widow, lineal descendants, or lineal ancestors does not exceed five thousand pounds, the whole of the death duties leviable in respect of that property ; and

(b) Where the said value exceeds five thousand pounds—

(i) in respect of the first five thousand pounds, the whole of the death duties ; and

(ii) so much of the duties leviable in respect of the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the date of death with half-yearly rests would, at the expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuitants, 1912), amount to the whole of the duties so leviable.

(2.) The benefits of the relief given by this section as respects the first five thousand pounds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted

or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

(3.) Where the relief in respect of estate duty afforded to the widow, lineal descendants, or lineal ancestors by section fifteen of the Finance Act, 1914, would be greater than that afforded to them in respect of estate duty by this section, the relief in respect of estate duty shall be that under the said section fifteen and not that under this section, but in other cases the relief afforded by the said section fifteen shall not apply to any estate duty to which this section applies.

2. -(1.) Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property passing on the death of any person to which section one of this Act applies, and that subsequently estate duty has again become payable on the same property or any part thereof passing on the death of some other person to which section one of this Act applies, the whole of the estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case the duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of estate duty.

(2.) This section shall apply whether or not on any such death any property passes to the widow or lineal descendants or lineal ancestors of the deceased.

3. This Act may be cited as the Death Duties (Killed in War) Act, 1914.

FINANCE (No. 2) ACT, 1915.

[5 & 6 Geo. 5, c. 89.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [23rd December, 1915.]

PART IV.—GENERAL.

46. Section two of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

47. The Treasury may, if they think fit, during the continuance of the present war and a period of twelve months thereafter, issue any securities which thay have power to issue for the purpose of raising any money or any loan with a condition that neither, the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly. (*x*)

48. Where the holder of any Government stock dies, the production of probate, confirmation, or letters of administration granted by any court in the United Kingdom having authority to grant the same shall be sufficient authority to the Banks of England and Ireland, to the National Debt Commissioners, to the Postmaster-General, and to any savings bank authority to transfer the stock to the person to whom the probate, confirmation, or

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(*x*) The reference in this section to persons not domiciled in the United Kingdom has been withdrawn by the Finance Act, 1916 (6 & 7 Geo. 5, c. 24), s. 44, so far as concerns Income Tax (including Super Tax).

letters of administration were granted, or as directed by that person.

The expression "Government stock" has the same meaning as in the Savings Bank Act, 1893, as amended by any subsequent enactment. (*x*)

51. . . .

(3.) This Act may be cited as the Finance (No. 2) Act, 1915.

(*x*) This section has been amplified by the Finance Act, 1916 (6 & 7 Geo. 5, c. 24), s. 67.

FINANCE ACT, 1916.

[6 & 7 Geo. 5, c. 24.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [19th July, 1916.]

PART IV.—NATIONAL DEBT AND LOANS.

63. Any securities issued in the United States of America by a municipal corporation, county council, or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury, shall not be liable to any taxation present or future, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

The expression "local authority" in this section includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purposes of this section by the Local Government Board.

67. Where any Government stock is transferred by virtue of section forty-eight of the Finance (No. 2) Act, 1915, on the authority of any probate, confirmation, or letters of administration, or by virtue of this Act on the authority of any order or decree of any court, the Bank of England or Ireland, the National Debt Commissioners, the Postmaster-General, or the savings bank authority, as the case may be, shall be indemnified and protected, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate, confirmation, or letters of administration, or of such order or decree.

PART V.—GENERAL.

69. . . .

(3.) This Act may be cited as the Finance Act, 1916.

FINANCE ACT, 1917.

[7 & 8 Geo. 5, c. 31.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [2nd August, 1917.]

PART IV.—DEATH DUTIES.

29. Section fourteen of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, and section forty-six of the Finance (No. 2) Act, 1915, shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this Act, from causes arising out of the operations of the present war and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section fourteen, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

PART VI.—NATIONAL DEBT AND LOANS.

34.—(1.) The Treasury may by regulations (*x*) prescribe as securities to be accepted in payment of any death duty or excess profits duty or munitions Exchequer payments any stock or bonds forming part of any issue made for raising money in connection with the present war, and any such regulations may specify different securities in respect of different duties and payments, and may prescribe the limitations and conditions subject to which any securities will be accepted, and any person from whom any sum is due on account of any death duty or excess profits duty or munitions Exchequer payments may pay that sum or any part thereof by means of the transfer, in accordance with and subject

(*x*) For the relative regulations, see *post*, pp. 607 to 613.

to the provisions of such regulations as aforesaid, to the Commissioners of Inland Revenue of an appropriate amount (ascertained as hereinafter mentioned) of any stock or bonds authorised by the regulations.

(2.) Any stock or bonds so transferred shall be accepted by the Commissioners of Inland Revenue in satisfaction of the amount.

(3.) Any stock or bonds so transferred shall be deemed to mature for payment on the date of the transfer, but the principal payable on maturity shall be deemed to be a sum equal to the price of issue [or such other price as was specified in the conditions subject to which the stock or bonds were issued as the price at which the stock or bonds were to be valued for the purposes of this section (*x*)], and the principal and interest of the stock or bonds when received by the Commissioners of Inland Revenue shall be brought to account as revenue in such manner as the Treasury may direct.

(4.) Stock or bonds so transferred shall for the purposes of this section be valued at the price of issue [or such other price as was specified in the conditions subject to which the stock or bonds were issued as the price at which the stock or bonds were to be valued for the purposes of this section (*x*)] with the addition of any interest accrued due at the date of transfer but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date :

Provided that in the case of excess profits duty and munitions Exchequer payments—

(a) if the transfer takes place after the date when the duty or payments become payable there shall be deducted from the value so attributed to the stock or bonds the amount of any interest which accrued due on the stock or bonds after that date ; and

(b) if the transfer takes place before that date, a sum equal to the value thereof so ascertained as aforesaid shall be deemed to be money deposited under section fifty-four of the Finance Act, 1916, and interest thereon shall be allowed in accordance with that section.

(5.) For the purposes of this section interest shall be deemed to accrue from day to day.

(6.) Section sixty-one of the Finance Act, 1916, is hereby repealed.

PART VII.—GENERAL.

38.—(1.) . . . Part IV. of this Act shall be construed together with the Finance Act, 1894.

(2.) This Act may be cited as the Finance Act, 1917.

(*x*) The words in square brackets were directed to be inserted by the Finance Act, 1918 (8 & 9 Geo. 5, c. 15), s. 42.

FINANCE ACT, 1918.

[8 & 9 Geo. 5, c. 15.]

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance. [30th July, 1918.]

PART V.—GENERAL.

38.—(1.) Where the Bank have reason to believe that any person in whose name any war stock of an amount not exceeding in the aggregate one hundred pounds in nominal value or in actual value, whichever is the less, is standing has died the Bank may, in such manner as may be prescribed by regulations made under section one of the War Loan (Supplemental Provisions) Act, 1915, transfer the stock from the books of the Bank to the Post Office Stock Register established under that Act, and may in such manner as may be so prescribed remit any dividends accrued thereon to the Postmaster-General to be dealt with in the same manner as if the stock had been inscribed in the said register at the time when they accrued due.

(2.) Where the Bank have reason to believe that any person in whose name any Government stock of a nominal amount not exceeding in the aggregate five hundred pounds is standing has died in actual military service, and that he was a person resident in some part of His Majesty's dominions outside the British Islands, the Bank may on an application in that behalf made under this section by the proper authority and on an undertaking by the proper authority to answer for any death duties leviable in respect of the stock and any dividends accrued thereon, and to deal with the stock or the proceeds of sale thereof and any dividends thereon in accordance with the provisions of this section, hold the stock together with any dividends which have accrued, or which may thereafter accrue thereon at the disposal of the proper authority, and thereupon the stock shall become transferable by, and any dividends thereon shall become payable to, the proper authority as if that authority were the legal personal representative of the deceased person.

(3.) Where any stock is transferred or where any dividends are remitted or paid under or in pursuance of this section, the transfer, remittance, or payment, as the case may be, shall be deemed to have been properly made and the Bank shall be discharged from all liability in respect of the stock transferred and the dividends remitted or paid.

(4.) Where any stock is held at the disposal of or any dividends thereon are paid to the proper authority under or in pursuance of this section, that authority may, after making provision for the payment of any death duties leviable in respect of the stock and of the dividends, transfer the stock or any part of the stock to, or pay the proceeds of sale thereof or any part of those proceeds, to any person who, in the opinion of the proper authority, establishes a valid claim to the said stock or the proceeds of sale or any part thereof, and the receipt of any person to whom payment is made under or in pursuance of this sub-section shall be a good discharge to the proper authority for the sum paid and any stock transferred to any person under or in pursuance of this sub-section shall be deemed to have been properly transferred, and the proper authority shall be discharged from all liability in respect of the sum paid or the stock transferred.

(5.) For the purposes of this section—

The expression "the Bank" means the Bank of England or the Bank of Ireland, as the case may be;

The expression "proper authority" means the High Commissioner or agent in London of the Dominion or Colony in which the deceased person was resident, or any other person recognised by the Treasury as being in relation to the deceased person the proper authority for the purposes of this section;

The expression "Government stock" means any stock or bonds which are for the time being transferable in the books of the Bank under the National Debt Act, 1870, or by deed under section seventeen of the Finance Act, 1911;

The expression "war stock" means any Government stock issued in connection with any loan raised for the purposes of the present war;

The expression "death duties" has the same meaning as in sub-section (3) of section thirteen of the Finance Act, 1894;

A person shall be deemed to have died in actual military service if he was a person to whom at the time of his death the provisions of section eleven of the Wills Act, 1837, as amended by the Wills (Soldiers and Sailors) Act, 1918, applied or would have applied if he had been domiciled in England.

42. Section thirty-four of the Finance Act, 1917, shall have effect as though there were inserted therein after the words "price

of issue," in sub-section (3) and sub-section (4) thereof, the words "or such other price as was specified in the conditions subject to which the stock or bonds were issued as the price at which the stock or bonds were to be valued for the purposes of this section."

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war the relief from death duties given by section fourteen of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

45. . . .

(3.) This Act may be cited as the Finance Act, 1918.

FINANCE ACT, 1919.

[9 & 10 Geo. 5, c. 32.]

An Act to grant certain duties of Customs and Inland Revenue, including Excise, to alter other duties, and to amend the Law relating to Customs and Inland Revenue, including Excise, and the National Debt, and to make further provisions in connection with Finance. [31st July, 1919.]

PART III.—DEATH DUTIES.

29. The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty:

Provided that, where an interest in expectancy within the meaning of Part I. of the Finance Act, 1894, in any property has, before the thirtieth day of April nineteen hundred and nineteen been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

30. Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties), shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.

31. Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war, have effect, and be deemed always to have had effect as though—

(a) three years were substituted for twelve months wherever that expression occurs; and

(b) in the said section fourteen the expression "wounds inflicted, accident occurring or disease contracted

while on active service against an enemy" included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

PART V.—GENERAL.

38.—(1.) . . . Part III of this Act shall be construed together with the Finance Act, 1894.

. . . . . .

(2.) This Act may be cited as the Finance Act, 1919.

. . . . . .

THIRD SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per Cent. of
	£		£	
Exceeds	100	and does not exceed	500	1
,,	500	,, ,,	1,000	2
,,	1,000	,, ,,	5,000	3
,,	5,000	,, ,,	10,000	4
,,	10,000	,, ,,	15,000	5
,,	15,000	,, ,,	20,000	6
,,	20,000	,, ,,	25,000	7
,,	25,000	,, ,,	30,000	8
,,	30,000	,, ,,	40,000	9
,,	40,000	,, ,,	50,000	10
,,	50,000	,, ,,	60,000	11
,,	60,000	,, ,,	70,000	12
,,	70,000	,, ,,	90,000	13
,,	90,000	,, ,,	110,000	14
,,	110,000	,, ,,	130,000	15
,,	130,000	,, ,,	150,000	16
,,	150,000	,, ,,	175,000	17
,,	175,000	,, ,,	200,000	18
,,	200,000	,, ,,	225,000	19
,,	225,000	,, ,,	250,000	20
,,	250,000	,, ,,	300,000	21
,,	300,000	,, ,,	350,000	22
,,	350,000	,, ,,	400,000	23
,,	400,000	,, ,,	450,000	24
,,	450,000	,, ,,	500,000	25
,,	500,000	,, ,,	600,000	26
,,	600,000	,, ,,	800,000	27
,,	800,000	,, ,,	1,000,000	28
,,	1,000,000	,, ,,	1,250,000	30
,,	1,250,000	,, ,,	1,500,000	32
,,	1,500,000	,, ,,	2,000,000	35
,,	2,000,000	- - - - - -		40

LAND TRANSFER ACT, 1897.

[60 & 61 Vict. c. 65.]

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August, 1897.]

Whereas it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act":

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—ESTABLISHMENT OF A REAL REPRESENTATIVE.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this Part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

2.—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same

power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payments of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4.) Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of Court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that

the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

5. Nothing in this Part of this Act shall effect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

PART II.—AMENDMENTS OF THE LAND TRANSFER ACT, 1875.

13.—(1.) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to Succession Duty and Estate Duty.

(2.) If, on such application, it appears that there is, or is capable of arising, any such liability to Succession Duty or Estate Duty as would affect the purchaser from the person to be registered as proprietor, if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3.) Succession Duty and Estate Duty shall not—

(a) unless so noted on the register; or

(b) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land, subsisting or capable of arising; or

(c) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a *bonâ fide* registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

IONIAN BANK (LIMITED) ACT, 1899.

[62 & 63 Vict. c. xcix.]

An Act to make further provision with respect to the transmission of shares of the Ionian Bank, Limited, held by shareholders being subjects of the Kingdom of Greece. [13th July, 1899.]

And whereas the Ionian Bank obtained on the fifth day of March one thousand eight hundred and eighty-three a certificate of registration as a company with limited liability by the name of the Ionian Bank, Limited (hereinafter called "the bank"):

And whereas a majority of the shares of the bank are held by subjects of the King of the Hellenes resident in Greece (hereinafter referred to as "Greek subjects") and the dividends on the shares so held are paid in Greece:

And whereas in the case of a person being a Greek subject becoming entitled to a share of the bank in consequence of the death of a shareholder being a Greek subject the transmission of the interest in the share is according to Greek law evidenced only by a notarial act:

And whereas the tribunals of Greece recognise such transmission so evidenced as aforesaid and the bank can be compelled by those tribunals to recognise such transmission and to pay the dividends on the share to the person becoming entitled to the share as aforesaid:

And whereas doubts have arisen whether upon the death of a Greek subject being the registered holder of a share of the bank the bank can according to English law insert in the register of shareholders the name of the person becoming entitled to the share in consequence of such death as the owner of the share and pay the dividends on the share to such person without the production of probate of the will or of letters of administration to the estate and effects of the deceased holder:

And whereas the bank although compellable by the Greek tribunals to recognise such transmission of a share as aforesaid and to pay the dividends on the share to the person entitled thereto have no means of insisting upon the production to them of evidence of the transmission of the share:

And whereas in the circumstances aforesaid and as a consequence of the relinquishment by Her Majesty of Her protectorate over the

United States of the Ionian Islands and of the cession of those islands to the kingdom of Greece the bank may be unable to comply with the Greek law in the case of such transmission of shares as aforesaid without incurring under the English law grave liabilities in respect of which they have no remedy in Greece and it is just and expedient that the bank should be relieved from the last-mentioned liabilities but that object cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the Ionian Bank (Limited) Act, 1899.

2. If upon the death of a shareholder in the bank being a Greek subject the bank in such manner and under such regulations as the Treasury direct—

(a) Satisfy the Commissioners of Inland Revenue that duty is not payable to those Commissioners in respect of any property passing on the death of the deceased shareholder other than the shares in the bank; and

(b) Pay to the Commissioners of Inland Revenue the amount of duty which would be payable in respect of the shares on the grant of probate of the will of the deceased shareholder or if he died intestate of letters of administration to his estate and effects;

the bank may and shall insert in the register of shareholders of the bank the name of any person being a Greek subject who in the kingdom of Greece and according to Greek law has established his right to be considered as the owner of the share notwithstanding that no probate of any will of the deceased shareholder or if he died intestate any letters of administration to the estate and effects of the deceased shareholder has or have been produced to the bank.

The payment by the bank of dividends upon any such share to the person whose name is inserted in the register of shareholders as aforesaid shall not nor shall any other act or thing done by the bank under or in consequence of the provisions of this Act be deemed according to English law to be the taking possession of or administering by the bank or an intermeddling by the bank with the estate or effects of the deceased shareholder or any part thereof.

3. If the bank fails to comply with any of the Treasury regulations or of the provisions of this Act relating to duty the bank shall be liable to pay to the Commissioners of Inland Revenue one hundred pounds or a sum equal to double the amount of the duty

which ought to have been paid according as the Commissioners elect. Provided that the Commissioners or in any proceeding for the recovery of such penalty the Court shall have power to reduce any such penalty.

TREASURY REGULATIONS UNDER THE IONIAN BANK (LIMITED) ACT, 1899.

1. Within fourteen days from the receipt by the bank of information of the death of a shareholder, being a Greek subject, the bank, or the directors of the bank, or a person duly authorised by them, shall deliver to the Commissioners of Inland Revenue a statement (to be prepared on forms to be supplied by the Commissioners for the purpose) containing the following particulars:—(a) The full name of the deceased shareholder; (b) the date and place of his or her death; (c) the particulars and value as at the death of the deceased of the shares standing in the name of the deceased; and (d) whether so far as the bank is aware any other property situate in the United Kingdom passed on the death of the deceased.

2. The bank shall pay to the Commissioners of Inland Revenue such duties as may be properly assessed on the footing of the statement submitted by the bank, or the directors of the bank, or a person duly authorised by them, within twenty-one days from the date of assessment.

3. No transfer of the shares from the name of the deceased shareholder, being a Greek subject, to the name of any other person who has established his title under the Greek law, shall be made by the bank until the assessed duty has been paid to the Commissioners of Inland Revenue.

The Form of Statement provided by the Commissioners under Regulation 1 is No. 23.

DECEASED WIFE'S SISTER'S MARRIAGE ACT, 1907.

[7 Edw. 7, c. 47.]

An Act to amend the Law relating to Marriage with a Deceased Wife's Sister. [28th August, 1907.]

1. No marriage heretofore or hereafter contracted between a man and his deceased wife's sister, within the realm or without, shall be deemed to have been or shall be void or voidable, as a civil contract, by reason only of such affinity. . . .

[Two provisoes which in no way affect property or death duties are omitted.]

Provided also that in case, before the passing of this Act, any such marriage shall have been annulled, or either party thereto (after the marriage and during the life of the other) shall have lawfully married another, it shall be deemed to have become and to be void upon and after the day upon which it was so annulled, or upon which either party thereto lawfully married another as aforesaid.

2. No right, title, estate, or interest, whether in possession or expectancy, and whether vested or contingent at the time of the passing of this Act, existing in, to, or in respect of, any dignity, title of honour, or property, and no act or thing lawfully done or omitted before the passing of this Act shall be prejudicially affected nor shall any will be deemed to have been revoked by reason of any marriage heretofore contracted as aforesaid being made valid by this Act. And no claim by the Crown for duties leviable on or with reference to death, and before the passing of this Act due and payable, and no payment, commutation, composition, discharge, or settlement of account in respect of any duties leviable on or with reference to death before the passing of this Act duly made or given, shall be prejudicially affected by anything herein contained.

Nothing in this Act shall affect the devolution or distribution of the real or personal estate of any intestate, not being a party to the marriage, who at the time of the passing of this Act shall be and shall until his death continue to be a lunatic, so found by inquisition.

[Sections three to four in no way affect property or death duties, and are therefore not printed.]

5. In this Act the word "sister" shall include a sister of the half-blood.

6. This Act may be cited as the Deceased Wife's Sister's Marriage Act, 1907.

PAYMENT IN SECURITIES REGULATIONS.

PAYMENT IN SECURITIES.

THE DEATH DUTIES, &c. (PAYMENT IN SECURITIES) REGULATIONS (No. 2), 1918, DATED AUGUST 13, 1918, MADE BY THE TREASURY UNDER SECTION 34 OF THE FINANCE ACT, 1917 (7 & 8 GEO. 5, C. 31), AS AMENDED BY SECTION 42 OF THE FINANCE ACT, 1918 (8 & 9 GEO. 5, C. 15).

ST. R. & O., No. 1045.

The Lords Commissioners of His Majesty's Treasury in pursuance of the powers conferred upon them by the aforesaid Section 34 of the Finance Act, 1917, as amended by Section 42 of the Finance Act, 1918, hereby make the following Regulations :—

Death Duties.

1. The following securities shall be accepted in payment of any Death Duty :—

5 per cent. Exchequer Bonds, 1919.
5 per cent. Exchequer Bonds, 1920.
5 per cent. Exchequer Bonds, 1921.
6 per cent. Exchequer Bonds, 1920.

and, subject to the special conditions prescribed in Regulation 3 (1),

5 per cent. Exchequer Bonds, 1922.
4 per cent. National War Bonds, 1927.
5 per cent. National War Bonds, 1922.
5 per cent. National War Bonds, 1924.
5 per cent. National War Bonds, 1927.
4 per cent. National War Bonds, 1928.
5 per cent. National War Bonds, 1923.
5 per cent. National War Bonds, 1925.
5 per cent. National War Bonds, 1928.
4 per cent. War Loan, 1929–42, Stock and Bonds.
5 per cent. War Loan, 1929–47, Stock and Bonds.

Excess Profits Duty and Munitions Exchequer Payments.

2. The following securities shall, subject to the special conditions prescribed in Regulation 3 (2), be accepted in payment of Excess Profits Duty or Munitions Exchequer Payments :—

5 per cent. Exchequer Bonds, 1922.
4 per cent. National War Bonds, 1927.
5 per cent. National War Bonds, 1922.
5 per cent. National War Bonds, 1924.
5 per cent. National War Bonds, 1927.
4 per cent. National War Bonds, 1928.
5 per cent. National War Bonds, 1923.
5 per cent. National War Bonds, 1925.
5 per cent. National War Bonds, 1928.

3.—(1) (*a*) 5 per cent. Exchequer Bonds, 1922, 4 per cent. and 5 per cent. National War Bonds and 4 per cent. and 5 per cent. War Loan Stock and Bonds (other than War Loan Stock or Bonds resulting from the conversion of 4 per cent. or 5 per cent. National War Bonds), shall only be accepted in payment of Death Duties if it is shown to the satisfaction of the Commissioners of Inland Revenue that the Stock or Bonds have formed part of the estate passing on the death of the deceased, or of the assets of a partnership of which he was a member, either for a period of not less than six months immediately preceding the date of death or continuously up to the date of death from the date of the original subscription to the Stock or the Bonds, or that the Stock or Bonds have resulted from the conversion of 5 per cent. Exchequer Bonds, 1919, 1920, or 1921, or 6 per cent. Exchequer Bonds, 1920, which formed part of such estate or assets as aforesaid or which were acquired on behalf of the estate by persons accountable for Death Duties thereon.

(*b*) 4 per cent. and 5 per cent. War Loan Stock or Bonds resulting from the conversion of 4 per cent. or 5 per cent. National War Bonds, which formed part of such estate or assets as aforesaid or which were acquired on behalf of the estate by persons accountable for Death Duties thereon may be accepted in payment of Death Duties on the estate if it is shown to the satisfaction of the Commissioners of Inland Revenue either that the Bonds converted were such Bonds as could themselves at the date of conversion have been properly so accepted, or, if the Bonds converted were not such Bonds, that the time for which the Bonds converted formed part of the estate or assets and the time which has elapsed since conversion amount in the aggregate to six months.

(2) 5 per cent. Exchequer Bonds, 1922, and 4 per cent. and 5 per cent. National War Bonds shall only be accepted in payment of Excess Profits Duty and Munitions Exchequer Payments if it is shown to the satisfaction of the Commissioners of Inland Revenue that the Bonds have been continuously in the possession of the person liable to the duty or payment either for a period of six months preceding the date of liability or from the date of the original issue of the Bonds to the date of transfer.

(3) For the purpose of this Regulation where an inscribed or

registered holding is converted into Bonds to Bearer or vice versâ the holding shall be deemed to be continuous.

(4) For the purpose of this Regulation Stock or Bonds given in exchange after the death of the deceased for other securities which formed part of such estate or assets as above shall themselves be deemed to have formed part of such estate or assets, as from the date on which the application to convert was made.

4. In any case in which it is desired to pay any sum on account of any Death Duty or of Excess Profits Duty or of Munitions Exchequer Payments by means of the transfer of Stock or Bonds in pursuance of these Regulations, application should be made to the Commissioners of Inland Revenue.

The application should be addressed to the Secretary of the Estate Duty Office in the case of Death Duties and to the Accountant and Comptroller-General of Inland Revenue (or in Scotland or Ireland the Comptroller of Stamps and Taxes) in the case of Excess Profits Duty and Munitions Exchequer Payments, and should specify the amount and denomination of the particular securities tendered: whether Stock or Registered Bonds or Bonds to Bearer, and in the first two cases whether transferable by deed or not; whether the securities are subject to any lien or charge whatsoever; and in the case of Death Duties whether the securities are under the applicant's control and, if not, in whose custody they are.

5. The Commissioners of Inland Revenue shall arrange with the applicant the procedure to be followed in each particular case for the transfer of the Stock or Bonds.

6. The value of the Stock or Bonds * tendered calculated as prescribed by Section 34 (4) of the Finance Act, 1917, as amended

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* NOTE.—Under Section 34 (4) of the Finance Act, 1917, as amended by Section 42 of the Finance Act, 1918, Stock or Bonds transferred in payment of Death Duties or Excess Profits Duty or Munitions Exchequer Payments are to be valued at the price of issue or such other price as was specified in the conditions subject to which the Stock or Bonds were issued as the price at which the Stock or Bonds were to be valued for the purposes of this section with the addition of any interest accrued due at the date of transfer, but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date.

Provided that in the case of Excess Profits Duty and Munitions Exchequer Payments:—

(*a*) If the transfer takes place after the date when the duty or payments become payable there shall be deducted from the value so attributed to the Stock or Bonds the amount of any interest which accrued due on the Stock or Bonds after that date; and

(*b*) If the transfer takes place before that date, a sum equal to the value thereof so ascertained as aforesaid shall be deemed to be money deposited under Section 54 of the Finance Act, 1916, and interest thereon shall be allowed in accordance with that section.

(For the purpose of this section interest shall be deemed to accrue from day to day.)

by Section 42 of the Finance Act, 1918, shall not exceed the amount of duty payable.

7. Stock or Registered Bonds shall only be accepted, as regards capital, in amounts of £5 or multiplies of £5.

8. Bonds to Bearer shall be transferred with all undue coupons attached.

9. In all cases Stock or Bonds shall be accepted subject to such verification as may be necessary and subject to an undertaking to the satisfaction of the Commissioners of Inland Revenue that all steps necessary to complete the transfer will be taken by or on behalf of the applicant, and the Commissioners may require such security as they may think fit to be given for the completion of the transfer.

10. The Commissioners of Inland Revenue shall forward to the Bank of England or Ireland or the Postmaster-General, as the case may be, particulars of any holding of Stock or Registered Bonds which has been tendered to them under these Regulations, and the Banks and the Postmaster-General shall be and are hereby authorised to decline to permit any dealing with, or accept any directions with regard to, such holding, except upon the instructions of the Commissioners.

11. The expression "Registered Bonds" in these Regulations includes Bonds registered in the Post Office Register.

12.—(1) These Regulations may be cited as the Death Duties, &c. (Payment in Securities) Regulations (No. 2), 1918.

(2) The Death Duties, &c. (Payment in Securities) Regulations, 1917 and 1918, are hereby revoked.

THE DEATH DUTIES, &c. (PAYMENT IN SECURITIES), REGULATIONS, 1919, DATED FEBRUARY 1, 1919, MADE BY THE TREASURY UNDER SECTION 34 OF THE FINANCE ACT, 1917 (7 & 8 GEO. 5, C. 31), AS AMENDED BY SECTION 42 OF THE FINANCE ACT, 1918 (8 & 9 GEO. 5, C. 15).

ST. R. & O., 1919, No. 122.

The Lords Commissioners of His Majesty's Treasury in pursuance of the powers conferred on them by the aforesaid section thirty-four of the Finance Act, 1917, as amended by section forty-two of the Finance Act, 1918, hereby make the following regulations:—

1. The Death Duties, &c. (Payment in Securities), Regulations (No. 2), 1918, shall have effect as though the following securities, that is to say—

4 per cent. National War Bonds, 1929,
5 „ „ „ „ „ (Fourth Series) 1924,
5 „ „ „ „ „ 1929,

were included amongst the securities which are to be accepted in payment of any death duty subject to the special conditions prescribed in Regulation 3 (1) thereof and in payment of excess profits duty or munitions exchequer payments subject to the special conditions prescribed in Regulation 3 (2) thereof.

2. These Regulations may be cited as the Death Duties, &c. (Payment in Securities) Regulations, 1919.

THE DEATH DUTIES (PAYMENT IN SECURITIES) REGULATIONS (No. 2), 1919, DATED SEPTEMBER 20, 1919, MADE BY THE TREASURY UNDER SECTION 34 OF THE FINANCE ACT, 1917 (7 & 8 GEO. 5, C. 31), AS AMENDED BY SECTION 42 OF THE FINANCE ACT, 1918 (8 & 9 GEO. 5, C. 15).

St. R. & O., 1919, No. 1353.

The Lords Commissioners of His Majesty's Treasury in pursuance of the powers conferred upon them by the aforesaid Section 34 of the Finance Act, 1917, as amended by Section 42 of the Finance Act, 1918, hereby make the following Regulations :—

1. Subject to the provisions of these Regulations the following securities shall be accepted in payment of any Death Duty :—

4 per cent. Funding Loan, 1960–1990.
4 per cent. Victory Bonds.

2.—(1) 4 per cent. Funding Loan, 1960–1990, and 4 per cent. Victory Bonds shall only be accepted if it is shown to the satisfaction of the Commissioners of Inland Revenue that the Stock or Bonds have formed part of the estate passing on the death of the deceased or of the assets of a partnership of which he was a member for a period of not less than six months immediately preceding the date of death or continuously up to the date of death from the date of the original issue of the Stock or the Bonds.

(2) For the purpose of this Regulation where an inscribed or registered holding is converted into Bonds to Bearer or vice versâ, the holding shall be deemed to be continuous.

3. Where Funding Loan or Victory Bonds formed part of the assets of a partnership of which the deceased was a member such Stocks or Bonds may only be tendered to an extent proportional to the share of the deceased in the capital of the partnership (as determined for purposes of death duties), and must have been held

by the partnership for a period of not less than 6 months immediately preceding the date of death or continuously up to the date of death from the date of the original subscription.

4. In any case in which it is desired to pay any sum on account of any Death Duty by means of the transfer of Stock or Bonds in pursuance of these Regulations, application should be made to the Commissioners of Inland Revenue.

The application should be addressed to the Controller of the Estate Duty Office and should specify the amount and denomination of the particular securities tendered; whether Stock or Registered Bonds or Bonds to Bearer, and in the first case whether transferable by deed or not; whether the securities are subject to any lien or charge whatsoever; and whether the securities are under the applicant's control, and, if not, in whose custody they are.

5. The Commissioners of Inland Revenue shall arrange with the applicant the procedure to be followed in each particular case for the transfer of the Stock or Bonds.

6. The value of Funding Loan Stock or Bonds accepted calculated as prescribed by Section 34 (4) of the Finance Act, 1917, as amended by Section 42 of the Finance Act, 1918, shall not exceed the amount of duty payable, but arrangements will be made by the Commissioners of Inland Revenue under which Victory Bonds in excess of the duty payable may be exchanged for Victory Bonds of smaller denomination.

7. Stock or Registered Bonds shall only be accepted, as regards capital, in amounts of £5, or multiples of £5.

8. Bonds to Bearer shall be transferred with all undue coupons attached.

9. In all cases Stock or Bonds shall be accepted subject to such verification as may be necessary and subject to an undertaking to the satisfaction of the Commissioners of Inland Revenue that all steps necessary to complete the transfer will be taken by or on behalf of the applicant, and the Commissioners may require such security as they may think fit to be given for the completion of the transfer.

10. The Commissioners of Inland Revenue shall forward to the Bank of England or Ireland or the Postmaster-General, as the case may be, particulars of any holding of Stock or Registered Bonds which has been tendered to them under these Regulations, and the Banks and the Postmaster-General shall be, and are hereby, authorised to decline to permit any dealing with, or accept any directions with regard to, such holding except upon the instructions of the Commissioners.

11. The expression "Registered Bonds" in these Regulations includes Bonds registered in the Post Office Register.

12. These Regulations may be cited as the Death Duties (Payment in Securities) Regulations, 1919.

NOTE.—Under Section 34 (4) of the Finance Act, 1917, as amended by Section 42 of the Finance Act, 1918, Stock or Bonds transferred in payment of Death Duties are to be valued at the price of issue or such other price as was specified in the conditions subject to which the Stock or Bonds were issued as the price at which the Stock or Bonds were to be valued for the purposes of this section with the addition of any interest accrued due at the date of transfer, but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date.

(For the purpose of this section interest shall be deemed to accrue from day to day.)

In accordance with the terms of the Prospectus of 12th June Funding Loan (Stock and Bonds) will be valued at the issue price of £80 per £100 nominal value plus accrued interest, and Victory Bonds will be valued at £100 per £100 nominal value plus accrued interest.

LIST OF FORMS.

INLAND REVENUE.

LIST OF FORMS PRESCRIBED FOR USE IN CONNECTION WITH THE PAYMENT, &c., OF DEATH DUTIES.

(1) Forms of Inland Revenue Affidavit to lead to Grants of Representation.

Where the deceased died	and							
(1)	(2) the gross principal value of the deceased's free Property, Real and Personal, does not exceed £300 or £500, and it is desired to pay the fixed duty of 30*s.* or 50*s.* respectively. (*a*) if there is no settled property in addition.	(2) (*b*) if there is settled property in addition.	(3) the property consists exclusively of the deceased's free Personal Property in the United Kingdom.	(4) the property consists exclusively of the deceased's free Personal and Real Property in the United Kingdom.	(5) the forms referred to in columns 2, 3, and 4 are not applicable and the grant is not required in the circumstances set out in columns 6, 7, and 8.	(6) a second or subsequent grant is required in respect of property *which was within the operation of a previous grant.*	(7) the deceased died domiciled abroad *and no property situate in the United Kingdom passed at his death*, but a grant is required in respect of assets since transmitted to this Country.	(8) the grant is required solely in respect of property of which the deceased was Trustee only.
Estate Duty: on or after the 19th April, 1907	B—2	B—4	A—4	A—6	A—7	A—5	Y—1	Z—1
Estate Duty: after the 1st August, 1894, and prior to the 19th April, 1907	B—2	B—3	A—4	A—6	A—5	A—5	Y—1	Z—1
Probate Duty: on or before the 1st August, 1894	The form A should be used, except where the Grant is required in the circumstances shown in columns 7 and 8, when the form Y or Z, as indicated, is applicable, and except where the deceased died on or after the 1st June, 1881, and the *gross* Personal Estate, wherever situate, does not exceed £100 or £300 in value, so that either no Stamp Duty is payable or the fixed duty of 30*s.* is to be paid, when the form B should be used. Where the Estate and Effects in respect whereof Probate Duty is charged on the Affidavit exceeds £10,000, a statement on Form E must be delivered with the Affidavit.						Y	Z

(2) Form where no Formal Grant or Representation is Necessary.

No. 22. For Small Estates under £100 in net principal value, where money is deposited in a Savings Bank or is due from a Friendly Society, and a certificate of exemption from Duty is required to obtain payment of the money.

(3) Other Forms for Payment of

(a) Estate Duty and Settlement Estate Duty.

(To be delivered in duplicate, except form C—3.)

C—1. For Estate Duty on property on which the duty was not paid upon the Inland Revenue Affidavit, except where the duty should have been paid upon the Affidavit, in which case the form D—1 should be used.

C—2. For Settlement Estate Duty on settled property.

C—3. For second or subsequent instalments of Estate Duty or Settlement Estate Duty.

No. 20. For Estate Duty where a commutation of the duty payable in expectancy has been agreed to. Application should, in the first instance, be made in writing to the Controller, Estate Duty Office, Somerset House, London, W.C. 2, stating the reason for the application (sale or mortgage), the full particulars of the property, the title, the names and dates of birth of the tenants for life and in remainder, the gross amount of the sale moneys and how the amount is being dealt with, or the amount of the mortgage.

A—2. Instructions as to payment of Estate Duty.

(b) Legacy and Succession Duty under Wills, Intestacies, and Settlements.

(To be delivered in duplicate, except forms Nos. 1, 2, 7, *and* 7—1.)

No. 1. For specific or pecuniary Legacies.

No. 2. For Annuities (or instalments thereon) under Wills or for Duty on a life or other limited interest in personal property (except Leaseholds) created by a Will.

No. 3. For General Residuary Accounts.

No. 3—1. For funds retained in trust and chargeable with duty upon the capital value upon the determination of a life or a limited interest under a Will.

No. 4. For Personal Property (other than Leaseholds) under a Settlement, where the duty is chargeable upon the capital.

No. 5. For Personal Property (other than Leaseholds) under a Settlement where the duty is chargeable by way of life interest.

No. 6. For Real Property (including Leaseholds) where the duty is chargeable by way of life interest.

No. 6—1. For Real Property (including Leaseholds) where the deceased died after the 1st August, 1894, and the successor is competent to dispose of the property.

No. 7. For the second and subsequent instalments of Succession Duty to follow the forms Nos. 5, 6, and 9.

No. 7—1. For the second and subsequent instalments of Succession Duty to follow the form No. 6—1.

No. 8. For the proceeds of sale or principal value of Real or Leasehold property directed to be sold or sold under a power for that purpose. Where, however, such property directed to be sold forms part of the general residuary estate, it should be included in the form No. 3.

No. 9. For the cesser of terminable charges upon Real Property (including Leaseholds) where the duty is chargeable by way of life interest.

No. 10. For the proceeds of sale of Timber upon property comprised in a succession arising upon a death before the 30th April, 1909. *See also form No.* 39.

No. 19. For Succession Duty where a commutation has been agreed to. *See form No.* 20 *under* "*Estate Duty and Settlement Estate Duty.*"

(*c*) *Account Duty, where the Deceased died on or after the* 1*st June*, 1881, *and prior to the* 2*nd August*, 1894.

C. For Duty on Personal Property (including Leaseholds) passing under Voluntary Settlement, or Joint Tenancy, or as a *donatio mortis causâ*, or as gifts made within twelve months of death, and on Policies maintained for the benefit of a donee or assignee.

(*d*) *Temporary Estate Duty* (*under the Customs and Inland Revenue Act*, 1889, *where the Deceased died prior to the* 2*nd August*, 1894.

E. Statement to be delivered with the Inland Revenue Affidavit A, where the estate exceeds £10,000.

F. Statement for use with form C, where the value exceeds £10,000.

No. 13. Statement of Value to be delivered with an Account of any Succession, where the value of the succession exceeds £10,000. (In duplicate.)

FORMS FOR CORRECTING PAYMENTS OF DUTY ALREADY MADE, AND FOR CLAIMING PAYMENT OF INTEREST ON SETTLEMENT ESTATE DUTY.

(*a*) *Estate Duty and Settlement Estate Duty.*

D—1. Corrective Affidavit to be used where the payment of Estate Duty needing correction was made upon an Inland Revenue Affidavit. If further duty is to be paid the form is required in duplicate.

D—2. Corrective Account for Estate Duty, where the payment needing correction was made upon an Account, and for Settlement Estate Duty. If further duty is to be paid the form is required in duplicate.

No. 38. Where payment of interest on Settlement Estate Duty is claimed under the provisions of Section 14 (*b*) of the Finance Act, 1914.

(*b*) *Legacy and Succession Duty.*

(*c*) *Account Duty.*

H. For application for return of overpaid duty.

(*d*) *Temporary Estate Duty.*

G. Corrective Statement to be used when too little or too much duty has been paid on form E.

(*e*) *Probate Duty where the Grant was taken out on or after the 1st June*, 1881.

D. Corrective Affidavit when too little or too much duty has been paid.

(*f*) *Probate Duty where the Grant was taken out before the 1st June*, 1881.

L. Corrective Affidavit for additional duty on additional assets.

No. 0161. Corrective Affidavit where a return of duty is claimed on the ground of over estimate.

No. 0162. Corrective Affidavit where a return of duty is claimed on the ground of debts paid. Vouchers for the payment of the debts must be produced.

FORMS OF APPLICATION FOR CERTIFICATES OF PAYMENT OF DUTY.

No. 25. Under Section 11 (1) of the Finance Act, 1894.

No. 29. ,, ,, 9 (2) ,, ,, ,,

No. 30. ,, ,, 11 (2) ,, ,, ,,

No. 31. Under the Land Transfer Act, 1897.

No. 32. To lead to payment out of Funds in Court.

No. 33. That funds in Court may be dealt with, as directed, subject to payment of duty as shown in official requisition.

No. 34. For payment into Court under the Trustee Act, 1893.

FORMS APPLICABLE IN CONNECTION WITH APPEALS TO REFEREES.

No. 35. Notice of Appeal to Referee under the Land Values (Referee) Rules, 1910.

No. 35—1. Notice of Withdrawal of Appeal to Referee.

FORMS PRINTED ON PARCHMENT.

A small supply of forms Nos. C—1, 3, 6, and 6—1 are printed on parchment and copies can be obtained of The Controller of Stamps and Stores, Somerset House, London, W.C. 2, on payment of 1*s.* 6*d.* for each copy of the forms Nos. C—1, 3, and 6—1, and 1*s.* for each copy of the form No. 6.

WHERE THE FORMS MAY BE OBTAINED.

All the forms may be obtained from The Controller, Estate Duty Office, Somerset House, London, W.C. 2, on personal application, or by letter.

The forms A—2, A—4, A—6, A—7, B—2, B—4, C—1, C—3, D—1, D—2, 1, 2, 3, 3—1, 4, 5, 6, 6—1, 7, 7—1, 8, 9, and 25, may also be obtained at Head Post Offices outside the Metropolitan Postal District, and at the Throgmorton Avenue, E.C., Post Office, on personal application.

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